

THE
UNREPEALED CENTRAL ACTS
WITH
CHRONOLOGICAL TABLE AND INDEX

VOLUME II
From 1872 to 1881, both inclusive



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PREFACE

The Acts included in this Volume are printed generally as modified up to the 31st December, 1937; but the repeals recently effected by the Repealing Act, 1938 (I of 1938) have also been taken into account in preparing the text as well as the Chronological Table.

K. SUNDARAM, I.C.S.,
*Officer on Special Duty,
Reforms Office,
Government of India.*

NEW DELHI,
1st April, 1938.

LIST OF ABBREVIATIONS USED

A O	.	for Government of India (Adaptation of Indian Laws) Order, 1937, as modified by the Government of India (Adaptation of Indian Laws) Supplementary Order, 1937
B & O		„ Bihar and Orissa
Ben	.	„ Bengal
Bom	.	„ Bombay
Brit Enact., I.S.	.	„ British Enactments in force in Indian States
Ch		„ Chapter
Cl	.	„ Clause
Coll Stat Ind		„ Collection of Statutes relating to India
CP	.	„ Central Provinces
EB & A		„ Eastern Bengal and Assam
Gen R & O		„ General Statutory Rules and Orders
GG in C	.	„ Governor General in Council
GG of India in C		„ Governor General of India in Council
G in C		„ Governor in Council
G of I		„ Government of India
Govt		„ Government
Ins	.	„ Inserted
LG		„ Local Government
Mad	.	„ Madras
NWFP.	.	„ North West Frontier Province
Pt	.	„ Part
R and O	.	„ Rules and Orders
Reg		„ Regulation
Rep	.	„ Repealed
S	.	„ Section
Sch	.	„ Schedule.
Subs		„ Substituted
UP		„ United Provinces

CHRONOLOGICAL TABLE OF THE UNREPEALED CENTRAL ACTS 1872-81

1 Year	2 No	3 Short title or Subject	4 Page
1872	I	The Indian Evidence Act 1872	1
	III	The Special Marriage Act 1872	65
	IV	The Punjab Laws Act 1872	77
	IX	The Indian Contract Act 1872	91
	XX	The Indian Christian Marriage Act 1872	155
	XXII	The Act of 1872 Amendment Act 1872	Not printed ¹
1873	III	The Madras Civil Courts Act 1873	193
	V	The Government Savings Banks Act 1873	203
	VIII	The Northern India Canal and Drainage Act 1873	207
	X	The Indian Oaths Act 1873	237
	XVI	The North Western Provinces Village and Road Police Act 1873	242
	XXVII	The Nawab Nazim's Debts Act 1873	Not printed ¹
1874	III	The Married Women's Property Act 1874	246
	IV	The Foreign Recruiting Act 1874	250
	IX	The European Vagrancy Act 1874	252
	XV	The Laws Local Extent Act 1874	268
	IX	The Indian Majority Act 1875	288
1875	XXIII	The Indian Law Reports Act 1875	290
	XX	The Central Provinces Laws Act 1875	291
	II	The Burma Land and Revenue Act 1876	Not printed ¹
1876	VI	The Chota Nagpur Incumbered Estates Act 1876	298
	IX	The Native Coinage Act 1876	315
	X	The Bombay Revenue Jurisdiction Act 1876	318

¹ Practically obsolete

² Act relates to Burma

CHRONOLOGICAL TABLE OF THE ORIGINATED CITIZENSHIP ACTS BY THE (continued)

1 Year	2	3 Description of the Act	4 Page
1876 <i>cont'd</i>	XV	The Act relating to the ... 1876	22
	XVIII	The Act relating to the ... 1876	23
	XIX	The Act relating to the ... 1876	24
	XX	The Act relating to the ... 1876	25
1877	I	The Act relating to the ... 1877	26
	IV	The Act relating to the ... 1877	27
	IX	The Act relating to the ... 1877	28
	XIV	The Act relating to the ... 1877	29
1878	I	The Act relating to the ... 1878	30
	VI	The Act relating to the ... 1878	31
	XIII	The Act relating to the ... 1878	32
	XI	The Act relating to the ... 1878	33
	XII	The Act relating to the ... 1878	34
	XV	The Act relating to the ... 1878	35
	XVII	The Act relating to the ... 1878	36
1879	VI	The Act relating to the ... 1879	37
	XIV	The Act relating to the ... 1879	38
	XVI	The Act relating to the ... 1879	39
	XVIII	The Act relating to the ... 1879	40
	XIX	The Act relating to the ... 1879	41
1880	I	The Act relating to the ... 1880	42
	II	The Act relating to the ... 1880	43
	V	The Act relating to the ... 1880	44

**CHRONOLOGICAL TABLE OF THE UNREPEALED CENTRAL
ACTS, 1872—81—(concluded)**

1 Year	2 No	3 Short title or Subject	4 Page
1880— <i>contd</i>	XII	The Kazis Act, 1880	62
	XIII	The Vaccination Act, 1880	64
1881	I	Taj Mahal's Pension Act, 1881	62
	XI	The Municipal Taxation Act, 1881	117
	XIII	The Fort William Act, 1881	121
	XVI	The Obstructions in Fairways Act, 1881	121
	XVIII	The Central Provinces Land revenue Act, 1881	211
	XXI	The Bhoach and Kaira Incumbered Estates Act, 1881	221
	XXV	The Banks Laws Act, 1881	231
	XXVI	The Negotiable Instruments Act, 1881	231

¹ Relates to land revenue, *see* Mail Code, Vol. I.

THE
UNREPEALED CENTRAL ACTS.
Volume II.

THE INDIAN EVIDENCE ACT, 1872

CONTENTS

PREAMBLE

PART I

RELEVANCY OF FACTS

CHAPTER I

PRELIMINARY

SECTIONS

- 1 Short title
Extent
Commencement of Act
 - 2 *{ Repealed }*
 - 3 Interpretation-clause
 - 4 'May presume "
'Shall presume "
"Conclusive proof "
-

CHAPTER II

OF THE RELEVANCY OF FACTS

- 5 Evidence may be given of facts in issue and relevant facts
- 6 Relevancy of facts forming part of same transaction
- 7 Facts which are the occasion, cause or effect of facts in issue
- 8 Motive, preparation and previous or subsequent conduct

SECTIONS

- 9 Facts necessary to explain or introduce relevant facts
- 10 Things said or done by conspirator in reference to common design
- 11 When facts not otherwise relevant become relevant
- 12 In suits for damages, facts tending to enable Court to determine amount, are relevant
- 13 Facts relevant when right or custom is in question
- 14 Facts showing existence of state of mind, or of body or bodily feeling
- 15 Facts bearing on question whether act was accidental or intentional
- 16 Existence of course of business when relevant

ADMISSIONS

- 17 Admission defined
- 18 Admission—
 - by party to proceeding or his agent,
 - by suitor in representative character
 - by party interested in subject matter,
 - by person from whom interest derived
- 19 Admissions by persons whose position must be proved as against party to suit
- 20 Admissions by persons expressly referred to by party to suit
- 21 Proof of admissions against persons making them, and by or on their behalf
- 22 When oral admissions as to contents of documents are relevant
- 23 Admissions in civil cases when relevant
- 24 Confession caused by inducement, threat or promise when irrelevant in criminal proceeding
- 25 Confession to police officer not to be proved
- 26 Confession by accused while in custody of police not to be proved against him
- 27 How much of information received from accused may be proved
- 28 Confession made after removal of impression caused by inducement, threat or promise, relevant
- 29 Confession otherwise relevant not to become irrelevant because of promise of secrecy, etc
- 30 Consideration of proved confession affecting person making it and others jointly under trial for same offence
- 31 Admissions not conclusive proof, but may estop

STATEMENTS BY PERSONS WHO CANNOT BE CALLED AS WITNESSES

SECTIONS

- 32 Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant
 When it relates to cause of death,
 or is made in course of business,
 or against interest of maker,
 or gives opinion as to public right or custom or matters of general interest,
 or relates to existence of relationship,
 or is made in will or deed relating to family affairs
 or in document relating to transaction mentioned in section 13, clause (a),
 or is made by several persons and expresses feelings relevant to matter in question
- 33 Relevancy of certain evidence for proving, in subsequent proceeding, the truth of facts therein stated

STATEMENTS MADE UNDER SPECIAL CIRCUMSTANCES

- 34 Entries in books of account when relevant
- 35 Relevancy of entry in public record, made in performance of duty.
- 36 Relevancy of statements in maps, charts and plans
- 37 Relevancy of statement as to fact of public nature contained in certain Acts or notifications
- 38 Relevancy of statements as to any law contained in law books.

HOW MUCH OF A STATEMENT IS TO BE PROVED

- 39 What evidence to be given when statement forms part of a conversation, document book, or series of letters or papers.

JUDGMENTS OF COURTS OF JUSTICE WHEN RELEVANT

- 40 Previous judgments relevant to bar a second suit or trial
- 41 Relevancy of certain judgments in probate, etc., jurisdiction
- 42 Relevancy and effect of judgments, orders or decrees other than those mentioned in section 41
- 43 Judgments etc other than those mentioned in sections 40 to 42, when relevant
- 44 Fraud or collusion in obtaining judgment, or incompetency of Court, may be proved

OPINIONS OF THIRD PERSONS WHEN RELEVANT

SECTIONS

- 45 Opinions of experts
- 46 Facts bearing upon opinions of experts
- 47 Opinion as to handwriting, when relevant
- 48 Opinion as to existence of right or custom, when relevant
- 49 Opinion as to usages, tenets, etc., when relevant
- 50 Opinion on relationship, when relevant
- 51 Grounds of opinion, when relevant

CHARACTER WHEN RELEVANT

- 52 In civil cases, character to prove conduct imputed, irrelevant
- 53 In criminal cases, previous good character relevant
- 54 Previous bad character not relevant, except in reply
- 55 Character as affecting damages

PART IION PROOF

CHAPTER III

FACTS WHICH NEED NOT BE PROVED

- 56 Fact judicially noticeable need not be proved
- 57 Facts of which Court must take judicial notice
- 58 Facts admitted need not be proved

CHAPTER IV

OF ORAL EVIDENCE

- 59 Proof of facts by oral evidence
- 60 Oral evidence must be direct

CHAPTER V

OF DOCUMENTARY EVIDENCE

- 61 Proof of contents of documents
- 62 Primary evidence
- 63 Secondary evidence
- 64 Proof of documents by primary evidence
- 65 Cases in which secondary evidence relating to documents may be given

SECTIONS.

- 66 Rules as to notice to produce
- 67 Proof of signature and handwriting of person alleged to have signed or written document produced
- 68 Proof of execution of document required by law to be attested
- 69 Proof where no attesting witness found
- 70 Admission of execution by party to attested document
- 71 Proof when attesting witness denies the execution
- 72 Proof of document not required by law to be attested
- 73 Comparison of signature, writing or seal with others admitted or proved

PUBLIC DOCUMENTS

- 74 Public documents
- 75 Private documents
- 76 Certified copies of public documents
- 77 Proof of documents by production of certified copies
- 78 Proof of other official documents

PRESUMPTION AS TO DOCUMENTS

- 79 Presumption as to genuineness of certified copies
- 80 Presumption as to documents produced as record of evidence
- 81. Presumption as to Gazettes, newspapers private Acts of Parliament and other documents
- 82 Presumption as to document admissible in England without proof of seal or signature
- 83 Presumption as to maps or plans made by authority of Government
- 84 Presumption as to collections of laws and reports of decisions
- 85 Presumption as to powers of attorney
- 86 Presumption as to certified copies of foreign judicial records
- 87 Presumption as to books, maps and charts
- 88 Presumption as to telegraphic messages
- 89 Presumption as to due execution, etc , of documents not produced
- 90 Presumption as to documents thirty years old

 CHAPTER VI

OF THE EXCLUSION OF ORAL BY DOCUMENTARY EVIDENCE

- 91 Evidence of terms of contracts grants and other dispositions of property reduced to form of document

SECTIONS

- 92 Exclusion of evidence of oral agreement
- 93 Exclusion of evidence to explain or amend ambiguous document
- 94 Exclusion of evidence against application of document to existing facts
- 95 Evidence as to document unmeaning in reference to existing facts
- 96 Evidence as to application of language which can apply to one only of several persons
- 97 Evidence as to application of language to one of two sets of facts to neither of which the whole correctly applies
- 98 Evidence as to meaning of illegible characters etc
- 99 Who may give evidence of agreement varying terms of document
- 100 Saving of provisions of Indian Succession Act relating to wills

 PART III

 PRODUCTION AND EFFECT OF EVIDENCE

CHAPTER VII

OF THE BURDEN OF PROOF

- 101 Burden of proof
- 102 On whom burden of proof lies
- 103 Burden of proof as to particular fact
- 104 Burden of proving fact to be proved to make evidence admissible
- 105 Burden of proving that case of accused comes within exceptions
- 106 Burden of proving fact especially within knowledge
- 107 Burden of proving death of person known to have been alive within thirty years
- 108 Burden of proving that person is alive who has not been heard of for seven years
- 109 Burden of proof as to relationship in the cases of partners landlord and tenant principal and agent
- 110 Burden of proof as to ownership
- 111 Proof of good faith in transactions where one party is in relation of active confidence
- 112 Birth during marriage conclusive proof of legitimacy
- 113 Proof of cession of territory
- 114 Court may presume existence of certain facts

CHAPTER VIII

ESTOPPEL

SECTIONS

- 115 Estoppel
- 116 Estoppel of tenant,
and of licensee of person in possession
- 117 Estoppel of acceptor of bill of exchange holder or licensee

CHAPTER IX

OF WITNESSES

- 118 Who may testify
- 119 Dumb witnesses
- 120 Parties to civil suit and their wives or husbands
Husband or wife of person under criminal trial
- 121 Judges and Magistrates
- 122 Communications during marriage
- 123 Evidence as to affairs of State
- 124 Official communications
- 125 Information as to commission of offences
- 126 Professional communications
- 127 Section 126 to apply to interpreters etc
- 128 Privilege not waived by volunteering evidence
- 129 Confidential communications with legal advisers
- 130 Production of title deeds of witness not a party
- 131 Production of documents which another person having possession could refuse to produce
- 132 Witnesses not excused from answering on ground that answer will criminate
Proviso
- 133 Accomplice
- 134 Number of witnesses

CHAPTER X

OF THE EXAMINATION OF WITNESSES

- 135 Order of production and examination of witnesses
- 136 Judge to decide as to admissibility of evidence
- 137 Examination in chief
Cross examination
Re examination
- 138 Order of examinations
Direction of re examination
- 139 Cross examination of person called to produce a document
- 140 Witnesses to character

SECTIONS

- 92 Exclusion of evidence of oral agreement
- 93 Exclusion of evidence to explain or amend ambiguous document
- 94 Exclusion of evidence against application of document to existing facts
- 95 Evidence as to document unmeaning in reference to existing facts
- 96 Evidence as to application of language which can apply to one only of several persons
- 97 Evidence as to application of language to one of two sets of facts to neither of which the whole correctly applies
- 98 Evidence as to meaning of illegible characters etc
- 99 Who may give evidence of agreement varying terms of document
- 100 Saving of provisions of Indian Succession Act relating to wills

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- 102 On whom burden of proof lies
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- 104 Burden of proving fact to be proved to make evidence admissible
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- 109 Burden of proof as to relationship in the cases of partners, landlord and tenant principal and agent
- 110 Burden of proof as to ownership
- 111 Proof of good faith in transactions where one party is in relation of active confidence
- 112 Birth during marriage conclusive proof of legitimacy
- 113 Proof of cession of territory
- 114 Court may presume existence of certain facts

CHAPTER VIII

ESTOPPEL

SECTIONS

- 115 Estoppel
- 116 Estoppel of tenant
and of licensee of person in possession
- 117 Estoppel of acceptor of bill of exchange bailee or licensee

CHAPTER IX

OF WITNESSES

- 118 Who may testify
- 119 Dumb witnesses
- 120 Parties to civil suit and their wives or husbands
Husband or wife of person under criminal trial
- 121 Judges and Magistrates
- 122 Communications during marriage
- 123 Evidence as to affairs of State
- 124 Official communications
- 125 Information as to commission of offences
- 126 Professional communications
- 127 Section 126 to apply to interpreters etc
- 128 Privilege not waived by volunteering evidence
- 129 Confidential communications with legal advisers
- 130 Production of title deeds of witness not a party
- 131 Production of documents which another person having possession could refuse to produce
- 132 Witness not excused from answering on ground that answer will criminate
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OF THE EXAMINATION OF WITNESSES

- 135 Order of production and examination of witnesses
- 136 Judge to decide as to admissibility of evidence
- 137 Examination in chief
Cross examination
Re examination
- 138 Order of examinations
Direction of re examination
- 139 Cross examination of person called to produce a document.
- 140 Witnesses to character

SECTIONS.

141. Leading questions
142. When they must not be asked.
143. When they may be asked.
144. Evidence as to matters in writing.
145. Cross-examination as to previous statements in writing.
146. Questions lawful in cross-examination.
147. When witness to be compelled to answer.
- 148 Court to decide when question shall be asked and when witness compelled to answer
149. Question not to be asked without reasonable grounds
150. Procedure of Court in case of question being asked without reasonable grounds.
151. Indecent and scandalous questions
152. Questions intended to insult or annoy.
- 153 Exclusion of evidence to contradict answers to questions testing veracity
154. Question by party to his own witness
- 155 *Impeaching credit of witness*
- 156 Questions tending to corroborate evidence of relevant fact, admissible.
- 157 Former statements of witness may be proved to corroborate later testimony as to same fact
- 158 What matters may be proved in connection with proved statement relevant under section 32 or 33
159. Refreshing memory
When witness may use copy of document to refresh memory.
- 160 Testimony to facts stated in document mentioned in section 159.
161. Right of adverse party as to writing used to refresh memory.
162. Production of documents
Translation of documents
- 163 Giving, as evidence, of document called for and produced on notice.
- 164 Using, as evidence, of document production of which was refused on notice.
165. Judge's power to put questions or order production
- 166 Power of jury or assessors to put questions

CHAPTER XI

OF IMPROPER ADMISSION AND REJECTION OF EVIDENCE

167. No new trial for improper admission or rejection of evidence.

(Chapter I—Preliminary)

ACT No I of 1872¹.

[15th March, 1872.]

THE INDIAN EVIDENCE ACT, 1872.

WHEREAS it is expedient to consolidate, define and amend the law Preamble
of Evidence It is hereby enacted as follows —

PART I

REFERENCY OF FACTS

CHAPTER I

PRELIMINARY

1 This Act may be called the Indian Evidence Act, 1872

Short title

It extends to the whole of British India,² and applies to all judicial Extent
proceedings in or before any Court, including Courts martial,³
[other than Courts-martial convened under the Army Act,]⁴ [the Naval
Discipline Act or that Act as modified by the Indian Navy (Discipline)
Act, 1931,]⁵ [or the Air Force Act] but not to affidavits⁶ presented to
any Court or officer, nor to proceedings before an arbitrator;

¹ For Statement of Objects and Reasons, see Gazette of India, 1868, p 1574; for the draft or preliminary Report of the Select Committee, dated 31st March, 1871, see *ibid*, 1871, Pt V, p 273, and for the second Report of the Select Committee, dated 30th January, 1872, see *ibid*, 1872 Pt V, p 34, for discussions in Council, see *ibid*, 1868 Supplement, pp 1060 and 1209, *ibid*, 1871, Extra Supplement, p 42, and Supplement, p 1641, and *ibid*, 1872, pp 136 and 230

² The Act is in force in the Sonthal Parganas, by the Sonthal
3, in the Chittagong Hill tracts, by the
of 1900), in British Baluchistan, by the
of 1913), s 3, in Panth Piploa by the
1929), in the Khondmals District, by
1936), s 3 and Sch, and in the Angul
5 of 1936) s 3 and Sch, also by notifica-
Act 1874 (14 of 1874), in the following
Hazaribagh, Lohardaga (now the Ranchi
44), and Manbhum and Pargana Dhal

Lhum and the Kolhan in the District of Singhbhum—see Gazette of India, 1881, Pt I, p 504 [the Lohardaga or Ranchi District included at this time the Palaman District, separated in 1894], and the Tarai of the Province of Agra, *ibid*, 1875, Pt I, p 505 Gánjam and Vizagapatam—see Gazette of India, 1899, Pt I, p 720

³ Ins by s 2 and Sch I of the Repealing and Amending Act, 1919 (18 of 1919)
Sec s 127 of the Army Act (44 and 45 Vict, c 58)

⁴ Ins by s 2 and Sch of the Amending Act, 1934 (35 of 1934)

⁵ Ins by s 2 and Sch I of the Repealing and Amending Act, 1927 (10 of 1927)

⁶ As to practice relating to affidavits, see the Code of Civil Procedure 1908 (Act 5 of 1908), s 30 (c) and Sch I, Order XIX, see also the Code of Criminal Procedure 1898 (Act 5 of 1898), ss 539 and 539 A

(Chapter I — Preliminary)

And it shall come into force on the first day of September, 1872

2 [Repeal of enactments] Rep by the Repealing Act 1938 (I of 1938), s 2 and Sch

3 In this Act the following words and expressions are used in the following senses unless a contrary intention appears from the context —

‘ Court ’ includes all Judges¹ and Magistrates² and all persons, except arbitrators legally authorized to take evidence

Fact means and includes—

- (1) any thing state of things or relation of things capable of being perceived by the senses
- (2) any mental condition of which any person is conscious

Illustrations

(a) That there are certain objects arranged in a certain order in a certain place, is a fact

(b) That a man heard or saw something is a fact

(c) That a man said certain words is a fact

(d) That a man holds a certain opinion has a certain intention acts in good faith or fraudulently or uses a particular word in a particular sense or is or was at a specified time conscious of a particular sensation is a fact

(e) That a man has a certain reputation is a fact

One fact is said to be relevant to another when the one is connected with the other in any of the ways referred to in the provisions of this Act relating to the relevancy of facts

The expression facts in issue means and includes—

any fact from which either by itself or in connection with other facts the existence non existence nature or extent of any right, liability or disability asserted or denied in any suit or proceeding, necessarily follows

Explanation—Whenever under the provisions of the law for the time being in force relating to Civil Procedure³, any Court records an issue of fact the fact to be asserted or denied in the answer to such issue is a fact in issue

¹ Cf the Code of Civil Procedure 1908 (Act 5 of 1908) s 2 the Indian Penal Code (Act 45 of 1860) s 19 and for a definition of District Judge the General Clauses Act 1897 (10 of 1897) s 3 (15)

² Cf the General Clauses Act 1897 (10 of 1897) s 3 (31) and Code of Criminal Procedure 1893 (Act 5 of 1893)

³ See now the Code of Civil Procedure 1908 (5 of 1908) as to the settlement of issues see Sch I Order XIV

*(Chapter I — Preliminary)**Illustrations*

A is a case of the murder of B

At his trial the following facts may be in issue —

that A caused B's death

that A intended to cause B's death,

that A had received grave and sudden provocation from B

that A at the time of doing the act which caused B's death, was by reason of unsoundness of mind incapable of knowing its nature

Document means any matter expressed or described upon any substance by means of letters figures or marks or by more than one of those means intended to be used or which may be used, for the purpose of recording that matter

Illustrations

A writing¹ is a document

* Words printed lithographed or photographed are documents

A map or plan is a document

An inscription on a metal plate or stone is a document

A signature is a document

Evidence means and includes—

Evidence.²

- (1) all statements which the Court permits or requires to be made before it by witnesses in relation to matters of fact under inquiry

such statements are called oral evidence,

- (2) all documents produced for the inspection of the Court, such documents are called documentary evidence

A fact is said to be proved when after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought under the circumstances of the particular case, to act upon the supposition that it exists Proved "

A fact is said to be disproved when after considering the matters before it the Court either believes that it does not exist, or considers its non existence so probable that a prudent man ought, under the circumstances of the particular case to act upon the supposition that it does not exist " Disproved "

A fact is said not to be proved when it is neither proved nor disproved " Not proved "

¹ Cf s 29 of the Indian Penal Code (45 of 1860) and s 3 (16) of the General Clauses Act 1897 (10 of 1897)

² Cf definition of writing in s 3 (58) of the General Clauses Act, 1897 (10 of 1897)

(Chapter I—Preliminary Chapter II—Of the Relevancy of Facts)

4 Whenever it is provided by this Act that the Court may presume a fact, it may either regard such fact as proved, unless and until it is disproved, or may call for proof of it

Whenever it is directed by this Act that the Court shall presume a fact, it shall regard such fact as proved, unless and until it is disproved

When one fact is declared by this Act to be conclusive proof of another, the Court shall, on proof of the one fact, regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it

CHAPTER II

OF THE RELEVANCY OF FACTS

5 Evidence may be given in any suit or proceeding of the existence or non existence of every fact in issue and of such other facts as are hereinafter declared to be relevant, and of no others

Explanation—This section shall not enable any person to give evidence of a fact which he is disentitled to prove by any provision of the law for the time being in force relating to Civil Procedure ¹

Illustrations

(a) A is tried for the murder of B by beating him with a club with the intention of causing his death

At A's trial the following facts are in issue —

A's beating B with the club,

A's causing B's death by such beating,

A's intention to cause B's death

(b) A suitor does not bring with him, and have in readiness for production at the first hearing of the case, a bond on which he relies This section does not enable him to produce the bond or prove its contents at a subsequent stage of the proceedings otherwise than in accordance with the conditions prescribed by the Code of Civil Procedure ¹

6 Facts which, though not in issue are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places

Illustrations

(a) A is accused of the murder of B by beating him Whatever was said or done by A or B or the bystanders at the beating, or so shortly before or after it as to form part of the transaction, is a relevant fact

(b) A is accused of waging war against the Queen by taking part in an armed insurrection in which property is destroyed troops are attacked, and gaols are broken open The occurrence of these facts is relevant, as forming part of the general transaction, though A may not have been present at all of them

¹ See now the Code of Civil Procedure 1908 (5 of 1908)

(C) after II —Of the Relevancy of Facts)

(c) A sues B for a libel contained in a letter forming part of a correspondence between the parties relating to the subject out of which the libel arose, and forming part of the correspondence in which it is contained, are relevant facts though they do not contain the libel itself

(d) The question is whether certain goods ordered from B were delivered to A. The goods were delivered to several intermediate persons successively. Each delivery is a relevant fact.

7 Facts which are the occasions, cause or effect, immediate or otherwise of relevant facts or facts in issue or which constitute the state of things under which they happened or which afforded an opportunity for their occurrence or transaction are relevant

Facts which are the occasion, cause or effect of facts in issue

Illustrations

(a) The question is whether A robbed B.

The facts that shortly before the robbery B went to a fair with money in his possession and that he showed it or mentioned the fact that he had it to third persons are relevant.

(b) The question is whether A murdered B.

Marks on the ground produced by a struggle at or near the place where the murder was committed are relevant facts.

(c) The question is whether A poisoned B.

The state of B's health before the symptoms ascribed to poison and habits of B known to A which afforded an opportunity for the administration of poison are relevant facts.

8 Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact.

Motive, preparation and previous or subsequent conduct

The conduct of any party, or of any agent to any party to any suit or proceeding in reference to such suit or proceeding or in reference to any fact in issue therein or relevant thereto and the conduct of any person an offence against whom is the subject of any proceeding is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact and whether it was previous or subsequent thereto.

Explanation 1 —The word conduct in this section does not include statements unless those statements accompany and explain acts other than statements, but this explanation is not to affect the relevancy of statements under any other section of this Act.

Explanation 2 —When the conduct of any person is relevant any statement made to him or in his presence and hearing which affects such conduct, is relevant.

Illustrations

(a) A is tried for the murder of B.

The facts that A murdered C that B knew that A had murdered C and that B had tried to extort money from A by threatening to make his knowledge public are relevant.

(b) A sues B upon a bond for the payment of money. B denies the making of the bond.

(Chapter I—Preliminary Chapter II—Of the Relevancy of Facts)

4 Whenever it is provided by this Act that the Court may presume a fact, it may either regard such fact as proved, unless and until it is disproved, or may call for proof of it

Whenever it is directed by this Act that the Court shall presume a fact, it shall regard such fact as proved unless and until it is disproved

When one fact is declared by this Act to be conclusive proof of another, the Court shall, on proof of the one fact, regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it

CHAPTER II

OF THE RELEVANCY OF FACTS

5 Evidence may be given in any suit or proceeding of the existence or non existence of every fact in issue and of such other facts as are hereinafter declared to be relevant and of no others

Explanation—This section shall not enable any person to give evidence of a fact which he is disentitled to prove by any provision of the law for the time being in force relating to Civil Procedure ¹

Illustrations

(a) A is tried for the murder of B by beating him with a club with the intention of causing his death

At A's trial the following facts are in issue—

A's beating B with the club,

A's causing B's death by such beating

A's intention to cause B's death

(b) A suitor does not bring with him and have in readiness for production at the first hearing of the case a bond on which he relies. This section does not enable him to produce the bond or prove its contents at a subsequent stage of the proceedings otherwise than in accordance with the conditions prescribed by the Code of Civil Procedure ¹

6 Facts which though not in issue are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places

Illustrations

(a) A is accused of the murder of B by beating him. Whatever was said or done by A or B or the bystanders at the beating or so shortly before or after it as to form part of the transaction, is a relevant fact

(b) A is accused of waging war against the Queen by taking part in an armed insurrection in which property is destroyed, troops are attacked and gaoles are broken open. The occurrence of these facts is relevant as forming part of the general transaction though A may not have been present at all of them

¹ See now the Code of Civil Procedure 1908 (5 of 1908)

(Chapter II —Of the Relevancy of Facts)

(c) A sues B for a libel contained in a letter forming part of a correspondence between the parties relating to the subject out of which the libel arose, and forming part of the correspondence in which it is contained, are relevant facts, though they do not contain the libel itself.

(d) The question is whether certain goods ordered from B were delivered to A. The goods were delivered to several intermediate persons successively. Each delivery is a relevant fact.

7 Facts which are the occasions, cause or effect, immediate or otherwise of relevant facts or facts in issue or which constitute the state of things under which they happened or which afforded an opportunity for their occurrence or transaction are relevant.

Facts which are the occasion, cause or effect of facts in issue

Illustrations

(a) The question is whether A robbed B.

The facts that shortly before the robbery B went to a fair with money in his possession and that he showed it or mentioned the fact that he had it to third persons are relevant.

(b) The question is whether A murdered B.

Marks on the ground produced by a struggle at or near the place where the murder was committed are relevant facts.

(c) The question is whether A poisoned I.

The state of B's health before the symptoms ascribed to poison and habits of B known to A which afforded an opportunity for the administration of poison are relevant facts.

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Motive, preparation and previous or subsequent conduct

The conduct of any party, or of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding, or in reference to any fact in issue therein or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto.

Explanation 1 —The word "conduct" in this section does not include statements unless those statements accompany and explain acts other than statements, but this explanation is not to affect the relevancy of statements under any other section of this Act.

Explanation 2 —When the conduct of any person is relevant any statement made to him or in his presence and hearing, which affects such conduct, is relevant.

Illustrations

(a) A is tried for the murder of B.

The facts that A murdered C, that B knew that A had murdered C, and that B had tried to extort money from A by threatening to make his knowledge public are relevant.

(b) A sues B upon a bond for the payment of money. B denies the making of the bond.

(Chapter II —Of the Relevancy of Facts)

The fact that at the time when the bond was alleged to be made, B required money for a particular purpose is relevant

(c) A is tried for the murder of B by poison

The fact that before the death of B A procured poison similar to that which was administered to B is relevant

(d) The question is whether a certain document is the will of A

The facts that not long before the date of the alleged will A made inquiry into matters to which the provisions of the alleged will relate that he consulted vakils in reference to making the will, and that he caused drafts of other wills to be prepared of which he did not approve, are relevant

(e) A is accused of a crime

The facts that either before or at the time of, or after the alleged crime, A provided evidence which would tend to give to the facts of the case an appearance favourable to himself, or that he destroyed or concealed evidence, or prevented the presence or procured the absence of persons who might have been witnesses, or suborned persons to give false evidence respecting it are relevant

(f) The question is whether A robbed B

The facts that after B was robbed, C said in A's presence—'the police are coming to look for the man who robbed B' and that immediately afterwards A ran away are relevant

(g) The question is whether A owes B rupees 10 000

The facts that A asked C to lend him money, and that D said to C in A's presence and hearing—'I advise you not to trust A for he owes B 10 000 rupees' and that A went away without making any answer are relevant facts

(h) The question is, whether A committed a crime

The fact that A absconded after receiving a letter warning him that inquiry was being made for the criminal and the contents of the letter are relevant

(i) A is accused of a crime

The facts that after the commission of the alleged crime he absconded or was in possession of property or the proceeds of property acquired by the crime or attempted to conceal things which were or might have been used in committing it are relevant

(j) The question is whether A was ravished

The facts that shortly after the alleged rape she made a complaint relating to the crime the circumstances under which and the terms in which the complaint was made are relevant

The fact that without making a complaint she said that she had been ravished is not relevant as conduct under this section though it may be relevant as a dying declaration under section 32 clause (1) or as corroborative evidence under section 157

(k) The question is whether A was robbed

The fact that soon after the alleged robbery, he made a complaint relating to the offence, the circumstances under which and the terms in which, the complaint was made are relevant

The fact that he said he had been robbed without making any complaint, is not relevant as conduct under this section though it may be relevant as a dying declaration under section 32 clause (1) or as corroborative evidence under section 157

Facts necessary to explain or introduce a fact in issue or relevant fact or which support or rebut an inference suggested by a fact in issue or relevant fact or which establish the identity of any thing or person whose identity is relevant, or fix the time or place at which any fact in issue or relevant fact happened, or which show the relation of parties

9 Facts necessary to explain or introduce a fact in issue or relevant fact or which support or rebut an inference suggested by a fact in issue or relevant fact or which establish the identity of any thing or person whose identity is relevant, or fix the time or place at which any fact in issue or relevant fact happened, or which show the relation of parties

(Chapter II —Of the Relevancy of Facts)

by whom any such fact was transacted are relevant in so far as they are necessary for that purpose

Illustrations

(a) The question is whether a given document is the will of A

The state of A's property and of his family at the date of the alleged will may be relevant facts

(b) A sues B for a libel imputing disgraceful conduct to A B affirms that the matter alleged to be libellous is true

The position and relations of the parties at the time when the libel was published may be relevant facts as introductory to the facts in issue

The particulars of a dispute between A and B about a matter unconnected with the alleged libel are irrelevant though the fact that there was a dispute may be relevant if it affected the relations between A and B

(c) A is accused of a crime

The fact that soon after the commission of the crime A absconded from his house is relevant under section 8 as conduct subsequent to and affected by facts in issue

The fact that at the time when he left home he had sudden and urgent business at the place to which he went is relevant as tending to explain the fact that he left home suddenly

The details of the business on which he left are not relevant except in so far as they are necessary to show that the business was sudden and urgent

(d) A sues B for inducing C to break a contract of service made by him with A C on leaving A's service says to A— I am leaving you because B has made me a better offer This statement is a relevant fact as explanatory of C's conduct, which is relevant as a fact in issue

(e) A accused of theft is seen to give the stolen property to B who is seen to give it to A's wife B says as he delivers it— A says you are to hide this B's statement is relevant as explanatory of a fact which is part of the transaction

(f) A is tried for a riot and is proved to have marched at the head of a mob The cries of the mob are relevant as explanatory of the nature of the transaction

10 Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it

Things said or done by conspirator in reference to common design.

Illustrations

Reasonable ground exists for believing that A has joined in a conspiracy to wage war against the Queen

The facts that B procured arms in Europe for the purpose of the conspiracy, C collected money in Calcutta for a like object D persuaded persons to join the conspiracy in Bombay E published writings advocating the object in view at Agra and F transmitted from Delhi to G at Cabul the money which C had collected at Calcutta and the contents of a letter written by H giving an account of the conspiracy are each relevant both to prove the existence of the conspiracy and to prove A's complicity in it although he may have been ignorant of all of them and although the persons by whom they were done were strangers to him and although they may have taken place before he joined the conspiracy or after he left it

(Chapter II—Of the Relevancy of Facts)

When facts
not otherwise
relevant
become
relevant

11 Facts not otherwise relevant are relevant—

- (1) if they are inconsistent with any fact in issue or relevant fact,
- (2) if by themselves or in connection with other facts they make the existence or non existence of any fact in issue or relevant fact highly probable or improbable

Illustrations

(a) The question is whether A committed a crime at Calcutta on a certain day
The fact that on that day A was at Lahore is relevant

The fact that near the time when the crime was committed A was at a distance from the place where it was committed which would render it highly improbable, though not impossible that he committed it is relevant

(b) The question is whether A committed a crime

The circumstances are such that the crime must have been committed either by A B C or D Every fact which shows that the crime could have been committed by no one else and that it was not committed by either B C or D is relevant

In suits for
damages
facts tending
to enable
Court to
determine
amount are
relevant

12 In suits in which damages are claimed any fact which will enable the Court to determine the amount of damages which ought to be awarded is relevant

Facts
relevant
when right
or custom is
in question

13 Where the question is as to the existence of any right or custom, the following facts are relevant —

- (a) any transaction by which the right or custom in question was created claimed modified recognized asserted or denied, or which was inconsistent with its existence
- (b) particular instances in which the right or custom was claimed recognized or exercised or in which its exercise was disputed asserted or departed from

Illustration

The question is whether A has a right to a fishery A deed conferring the fishery on A's ancestors a mortgage of the fishery by A's father a subsequent grant of the fishery by A's father irreconcilable with the mortgage particular instances in which A's father exercised the right or in which the exercise of the right was stopped by A's neighbours are relevant facts

Facts showing
existence
of state of
mind or of
body or
bodily feeling

14 Facts showing the existence of any state of mind such as intention, knowledge, good faith, negligence rashness ill will or good will towards any particular person or showing the existence of any state of body or bodily feeling are relevant when the existence of any such state of mind or body or bodily feeling is in issue or relevant

(Chapter II —Of the Relevancy of Facts)

1[Explanation 1.—A fact relevant as showing the existence of a relevant state of mind must show that the state of mind exists, not generally, but in reference to the particular matter in question

Explanation 2 —But where, upon the trial of a person accused of an offence, the previous commission by the accused of an offence is relevant within the meaning of this section, the previous conviction of such person shall also be a relevant fact **2]**

Illustrations

(a) A is accused of receiving stolen goods knowing them to be stolen. It is proved that he was in possession of a particular stolen article

The fact that at the same time, he was in possession of many other stolen articles is relevant as tending to show that he knew each and all of the articles of which he was in possession to be stolen

3[(b) A is accused of fraudulently delivering to another person a counterfeit coin which at the time when he delivered it he knew to be counterfeit

The fact that at the time of its delivery, A was possessed of a number of other pieces of counterfeit coin is relevant

The fact that A had been previously convicted of delivering to another person as genuine a counterfeit coin knowing it to be counterfeit is relevant **]**

(c) A sues B for damage done by a dog of B's which B knew to be ferocious

The facts that the dog had previously bitten X, Y and Z, and that they had made complaints to B are relevant

(d) The question is, whether A, the acceptor of a bill of exchange, knew that the name of the payee was fictitious

The fact that A had accepted other bills drawn in the same manner before they could have been transmitted to him by the payee if the payee had been a real person, is relevant as showing that A knew that the payee was a fictitious person.

(e) A is accused of defaming B by publishing an imputation intended to harm the reputation of B

The fact of previous publications by A respecting B, showing ill will on the part of A towards B is relevant, as proving A's intention to harm B's reputation by the particular publication in question

The facts that there was no previous quarrel between A and B, and that A repeated the matter complained of as he heard it, are relevant, as showing that A did not intend to harm the reputation of B

(f) A is sued by B for fraudulently representing to B that C was solvent, whereby B being induced to trust C, who was insolvent, suffered loss

The fact that at the time when A represented C to be solvent, C was supposed to be solvent by his neighbours and by persons dealing with him, is relevant, as showing that A made the representation in good faith

(g) A is sued by B for the price of work done by B, upon a house of which A is owner, by the order of C, a contractor

A's defence is that B's contract was with C

¹ Subs. by s. 1 (1) of the Indian Evidence Act (1872) Amendment Act, 1891 (3 of 1891), for the original *Explanation*

² See the Code of Criminal Procedure, 1898 (5 of 1898), s. 311

³ Subs. by s. 1 (2) of the Indian Evidence Act (1872) Amendment Act, 1891, (3 of 1891), for the original *illustration* (b)

(Chapter II—Of the Relevancy of Facts)

The fact that A paid C for the work in question is relevant, as proving that A did in good faith, make over to C the management of the work in question, so that C was in a position to contract with B on C's own account, and not as agent for A

(h) A is accused of the dishonest misappropriation of property which he had found, and the question is whether, when he appropriated it, he believed in good faith that the real owner could not be found

The fact that public notice of the loss of the property had been given in the place where A was is relevant as showing that A did not in good faith believe that the real owner of the property could not be found

The fact that A knew or had reason to believe, that the notice was given fraudulently by C who had heard of the loss of the property and wished to set up a false claim to it is relevant as showing that the fact that A knew of the notice did not disprove A's good faith

(i) A is charged with shooting at B with intent to kill him. In order to show A's intent the fact of A's having previously shot at B may be proved

(j) A is charged with sending threatening letters to B. Threatening letters previously sent by A to B may be proved as showing the intention of the letters

(k) The question is whether A has been guilty of cruelty towards B, his wife. Expressions of their feeling towards each other shortly before or after the alleged cruelty are relevant facts

(l) The question is whether A's death was caused by poison. Statements made by A during his illness as to his symptoms are relevant facts
(m) The question is what was the state of A's health at the time an assurance on his life was effected

Statements made by A as to the state of his health at or near the time in question are relevant facts

(n) A sues B for negligence in providing him with a carriage for hire not reasonably fit for use whereby A was injured

The fact that B's attention was drawn on other occasions to the defect of that particular carriage is relevant

The fact that B was habitually negligent about the carriages which he let to hire is irrelevant

(o) A is tried for the murder of B by intentionally shooting him dead. The fact that A on other occasions shot at B is relevant as showing his intention to shoot B

The fact that A was in the habit of shooting at people with intent to murder them is irrelevant

(p) A is tried for a crime. The fact that he said something indicating an intention to commit that particular crime is relevant

The fact that he said something indicating a general disposition to commit crimes of that class is irrelevant

Facts bearing on question whether act was accidental or intentional

15 When there is a question whether an act was accidental or intentional, ¹[or done with a particular knowledge or intention], the fact that such act formed part of a series of similar occurrences, in each of which the person doing the act was concerned is relevant

Illustrations

(a) A is accused of burning down his house in order to obtain money for which it is insured

¹ Ins by s. 2 of the Indian Evidence Act (1872) Amendment Act 1891 (3 of 1891)

(Chapter II. Of the Hierarchy of Facts.)

The facts that A lost in several houses successively each of which he insured in each of which a fire occurred and after each of which fires A received payment from a different insurance office are relevant as tending to show that the fires were not accidental.

(b) A is employed to receive money from the bill of B. It is A's duty to make entries in a book showing the amounts received by him. He makes an entry showing that on a particular occasion he received less than he really did receive.

The question is whether this false entry was accidental or intentional.

The facts that other entries made by A in the same book are false and that the false entries in each case are in favor of A are relevant.

(c) A is accused of fraudulently delivering to B a counterfeit rupee.

The question is whether the delivery of the rupee was accidental.

The facts that soon before or soon after the delivery to B A delivered counterfeit rupees to C, D and E are relevant as showing that the delivery to B was not accidental.

16 When there is a question whether a particular act was done, the existence of any course of business according to which it naturally would have been done is a relevant fact.

Existence of course of business when relevant

Illustrations

(a) The question is whether a particular letter was despatched.

The facts that it was the ordinary course of business for all letters put in a certain place to be carried to the post and that that particular letter was put in that place are relevant.

(b) The question is whether a particular letter reached A. The facts that it was posted in due course and was not returned through the Dead Letter Office are relevant.

ADMISSIONS

17 An admission is a statement, oral or documentary, which suggests any inference as to any fact in issue or relevant fact and which is made by any of the persons and under the circumstances, hereinafter mentioned.

Admission defined

18 Statements made by a party to the proceeding or by an agent to any such party whom the Court regards under the circumstances of the case as expressly or impliedly authorized by him to make them are admissions.

Admission by party to proceeding or his agent

Statements made by parties to suits suing or sued in a representative character are not admissions unless they were made while the party making them held that character.

by suitor in representative character

Statements made by—

(1) persons who have any proprietary or pecuniary interest in the subject matter of the proceeding and who make the statement in their character of persons so interested or

by party interested in subject matter

(2) persons from whom the parties to the suit have derived their interest in the subject matter of the suit

by person from whom interest derived

(Chapter II —Of the Relevancy of Facts)

are admissions if they are made during the continuance of the interest of the persons making the statements

Admissions by persons whose position must be proved as against party to suit

19 Statements made by persons whose position or liability it is necessary to prove as against any party to the suit are admissions if such statements would be relevant as against such persons in relation to such position or liability in a suit brought by or against them and if they are made whilst the person making them occupies such position or is subject to such liability

Illustrations

A undertakes to collect rents for B

B sues A for not collecting rent due from C to B

A denies that rent was due from C to B

A statement by C that he owed B rent is an admission and is a relevant fact as against A if A denies that C did owe rent to B

Admissions by persons expressly referred to by party to suit

20 Statements made by persons to whom a party to the suit has expressly referred for information in reference to a matter in dispute are admissions

Illustration

The question is whether a horse sold by A to B is sound

A says to B— Go and ask C C knows all about it C's statement is an admission

Proof of admissions against persons making them and by or on their behalf

21 Admissions are relevant and may be proved as against the person who makes them or his representative in interest but they cannot be proved by or on behalf of the person who makes them or by his representative in interest except in the following cases —

(1) An admission may be proved by or on behalf of the person making it when it is of such a nature that if the person making it were dead it would be relevant as between third persons under section 32

(2) An admission may be proved by or on behalf of the person making it when it consists of a statement of the existence of any state of mind or body relevant or in issue made at or about the time when such state of mind or body existed and is accompanied by conduct rendering its falsehood improbable

(3) An admission may be proved by or on behalf of the person making it, if it is relevant otherwise than as an admission

Illustrations

(a) The question between A and B is whether a certain deed is or is not forged A affirms that it is genuine B that it is forged

A may prove a statement by B that the deed is genuine and B may prove a statement by A that the deed is forged but A cannot prove a statement by himself that the deed is genuine nor can B prove a statement by himself that the deed is forged.

(C) after 11 — Of the Relevancy of Facts)

(1) A the captain of a ship is tried for casting her away

It is now to be shown that the ship was taken out of her proper course

A produces a book kept by him in the ordinary course of his business showing observations alleged to have been taken by him from day to day and indicating that the ship was not taken out of her proper course. A may prove these statements because they would be admissible between third parties if he were dead, under section 32 clause (2)

(c) A is accused of a crime committed by him at Calcutta

He produces a letter written by himself and dated at Lahore on that day and bearing the Lahore postmark of that day

The statement in the date of the letter is admissible because if A were dead it would be admissible under section 32 clause (2)

(d) A is accused of receiving stolen goods knowing them to be stolen

He offers to prove that he refused to sell them below their value

A may prove these statements though they are admissions because they are explanatory of conduct influenced by facts in issue

(e) A is accused of fraudulently having in his possession counterfeit coin which he knew to be counterfeit

He offers to prove that he asked a skilful person to examine the coin as he doubted whether it was counterfeit or not and that that person did examine it and told him it was genuine

A may prove these facts for the reasons stated in the last preceding illustration

22 Oral admissions as to the contents of a document are not relevant, unless and until the party proposing to prove them shows that he is entitled to give secondary evidence of the contents of such document under the rules hereinafter contained, or unless the genuineness of a document produced is in question

When oral admissions as to contents of documents are relevant

23 In civil cases no admission is relevant, if it is made either upon an express condition that evidence of it is not to be given, or under circumstances from which the Court can infer that the parties agreed together that evidence of it should not be given

Admissions in civil cases when relevant

Explanation—Nothing in this section shall be taken to exempt any barrister, pleader, attorney or vakil from giving evidence of any matter of which he may be compelled to give evidence under section 126

24 A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat or promise¹ having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the Court, to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him

Confession caused by inducement, threat or promise, when irrelevant in criminal proceeding

¹ For prohibition of such inducements etc see s 343 of the Code of Criminal Procedure, 1898 (Act 5 of 1898)

(Chapter II —Of the Relevancy of Facts)

Confession to police officer not to be proved

25 No confession made to a police officer¹ shall be proved as against a person accused of any offence

Confession by accused while in custody of police not to be proved against him

26 No confession made by any person whilst he is in the custody of a police officer unless it be made in the immediate presence of a Magistrate² shall be proved as against such person

3[*Explanation*—In this section Magistrate does not include the head of a village discharging magisterial functions in the Presidency of Fort St George⁴ * * * or elsewhere unless such headman is a Magistrate exercising the powers of a Magistrate under the Code of Criminal Procedure 1882 5]

How much of information received from accused may be proved

27 Provided that when any fact is proved to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer so much of such information, whether it amounts to a confession or not as relates distinctly to the fact thereby discovered may be proved

Confession made after removal of impression caused by inducement threat or promise relevant

28 If such a confession as is referred to in section 24 is made after the impression caused by any such inducement threat or promise has in the opinion of the Court been fully removed it is relevant

Confession otherwise relevant not to become irrelevant because of promise of secrecy etc

29 If such a confession is otherwise relevant it does not become irrelevant merely because it was made under a promise of secrecy, or in consequence of a deception practised on the accused person for the purpose of obtaining it or when he was drunk or because it was made in answer to questions which he need not have answered whatever may have been the form of those questions or because he was not warned that he was not bound to make such confession and that evidence of it might be given against him

Consideration of proved confession affecting person making it and others jointly under trial for same offence

30 When more persons than one are being tried jointly for the same offence and a confession made by one of such persons affecting himself and some other of such persons is proved the Court may take into consideration such confession as against such other person as well as against the person who makes such confession

¹ As to statements made to a police-officer investigating a case see s 162 of the Code of Criminal Procedure 1893 (Act 5 of 1893)

² A Coroner has been declared to be a Magistrate for the purposes of this section, s 20 of the Coroners Act 1871 (4 of 1871)

³ Ins by s 3 of the Indian Evidence Act (1872) Amendment Act 1891 (3 of 1891)

⁴ The words or in Burma rep by the A C

⁵ See now the Code of Criminal Procedure 1893 (Act 5 of 1893)

(Chapter II—On the Relevance of Facts)

1 [Illustration.—] Often in this section includes the attempt of a statement to rebut the other [see 2]

Illustration

a A and B are jointly tried for the murder of C. It is proved that A said— B and I murdered C. The Court may consider the effect of this confession as against B.

b A is on a trial for the murder of C. There is evidence to show that C was murdered by A and B and that B said— A and I murdered C.

This statement may not be taken into consideration by the Court against A as B is not being jointly tried.

31 Admissions are not conclusive proof of the matters admitted but they may operate as estoppels under the provisions hereinafter contained

Admissions not conclusive proof, but may estop

STATEMENTS BY PERSONS WHO CANNOT BE CALLED AS WITNESSES

32 Statements written or verbal, of relevant facts made by a person who is dead or who cannot be found or who has become incapable of giving evidence or whose attendance cannot be procured without an amount of delay or expense which under the circumstances of the case appears to the Court unreasonable, are themselves relevant facts in the following cases —

Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant

(1) When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question

When it relates to cause of death

Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question

(2) When the statement was made by such person in the ordinary course of business, and in particular when it consists of any entry or memorandum made by him in books kept in the ordinary course of business, or in the discharge of professional duty or of an acknowledgment written or signed by him of the receipt of money goods securities or property of any kind or of a document used in commerce written or signed by him or of the date of a letter or other document usually dated written or signed by him

or is made in course of business,

¹ Ins by s 4 of the Indian Evidence Act (1872) Amendment Act 1891 (3 of 1891)

² Cf Explanation 4 to s 108 of the Indian Penal Code (Act 45 of 1860)

(Chapter II —Of the Relevancy of Facts)

or against
interest of
maker,

(3) When the statement is against the pecuniary or proprietary interest of the person making it, or when, if true, it would expose him or would have exposed him to a criminal prosecution or to a suit for damages

or gives
opinion as
to public
right or
custom, or
matters of
general
interest,
or relates
to exist-
ence of
relation-
ship,

(4) When the statement gives the opinion of any such person, as to the existence of any public right or custom or matter of public or general interest, of the existence of which, if it existed, he would have been likely to be aware, and when such statement was made before any controversy as to such right, custom or matter has arisen

(5) When the statement relates to the existence of any relationship ¹[by blood marriage or adoption] between persons as to whose relationship ¹[by blood marriage or adoption] the person making the statement had special means of knowledge and when the statement was made before the question in dispute was raised

or is made
in will or
deed relat-
ing to
family
affairs,

(6) When the statement relates to the existence of any relationship ¹[by blood, marriage or adoption] between persons deceased, and is made in any will or deed relating to the affairs of the family to which any such deceased person belonged, or in any family pedigree, or upon any tombstone, family portrait or other thing on which such statements are usually made and when such statement was made before the question in dispute was raised

or in docu-
ment relat-
ing to trans-
action men-
tioned in
section 13
clause (a)
or is made
by several
persons and
expresses
feelings
relevant to
matter in
question

(7) When the statement is contained in any deed, will or other document which relates to any such transaction as is mentioned in section 13, clause (a)

(8) When the statement was made by a number of persons, and expressed feelings or impressions on their part relevant to the matter in question

Illustrations

(a) The question is, whether A was murdered by B or

A dies of injuries received in a transaction in the course of which she was ravished. The question is whether she was ravished by B, or

The question is whether A was killed by B under such circumstances that a suit would lie against B by A's widow

Statements made by A as to the cause of his or her death referring respectively to the murder the rape and the actionable wrong under consideration are relevant facts

(b) The question is as to the date of A's birth

An entry in the diary of a deceased surgeon regularly kept in the course of business stating that, on a given day he attended A's mother and delivered her of a son is a relevant fact

¹ Ins by s 2 of the Indian Evidence Act Amendment Act (18 of 1872)

(Chapter II—Of the Relevancy of Facts)

(i) The question is whether A was in Calcutta on a given day

A statement in the diary of a deceased pilot or regularly kept in the course of business that on a given day the pilot attended A at a place mentioned in Calcutta for the purpose of conferring with him upon specified business is a relevant fact

(d) The question is whether a ship sailed from Bombay harbour on a given day

A letter written by a deceased member of a mercantile firm by which she was chartered to their correspondents in London to whom the cargo was consigned stating that the ship sailed on a given day from Bombay harbour is a relevant fact

(e) The question is whether rent was paid to A for certain land

A letter from A's deceased agent to A saying that he had received the rent on A's account and paid it at A's order is a relevant fact

(f) The question is whether A and B were legally married

The statement of a deceased clergyman that he married them under such circumstances that the celebration would be a crime is relevant

(g) The question is whether A a person who cannot be found wrote a letter on a certain day. The fact that a letter written by him is dated on that day is relevant

(h) The question is what was the cause of the wreck of a ship

A protest made by the Captain whose attendance cannot be procured is a relevant fact

The question is whether a given road is a public way

A statement by A a deceased inhabitant of the village that the road was public is a relevant fact

(j) The question is what was the price of grain on a certain day in a particular market. A statement of the price made by a deceased hawala in the ordinary course of his business is a relevant fact

(k) The question is whether A who is dead was the father of B

A statement by A that B was his son is a relevant fact

(l) The question is what was the date of the birth of A

A letter from A's deceased father to a friend announcing the birth of A on a given day is a relevant fact

(m) The question is whether and when A and B were married

An entry in a memorandum book by C the deceased father of B of his daughter's marriage with A on a given date is a relevant fact

(n) A sues B for a libel expressed in a painted caricature exposed in a window. The question is as to the similarity of the caricature to A's character. The remarks of a crowd of spectators on these points may be relevant

33 Evidence given by a witness in a judicial proceeding, or by any person authorized by law to take it is relevant for the purpose of proving in a subsequent judicial proceeding or in a later judicial proceeding the truth of the facts which it tends to prove, if the witness is dead or cannot be found or is incapable of giving evidence or is kept out of the way by the adverse party, or if the evidence cannot be obtained without an amount of delay or expense which the circumstances of the case the Court considers to be unreasonable

(Chapter II—Of the Relevancy of Facts.)

Provided—

that the proceeding was between the same parties or their representatives in interest,

that the adverse party in the first proceeding had the right and opportunity to cross examine,

that the questions in issue were substantially the same in the first as in the second proceeding

Explanation—A criminal trial or inquiry shall be deemed to be a proceeding between the prosecutor and the accused within the meaning of this section

STATEMENTS MADE UNDER SPECIAL CIRCUMSTANCES.

Entries in
books of
account
when
relevant

34 Entries in books of account, regularly kept in the course of business, are relevant whenever they refer to a matter into which the Court has to inquire but such statements shall not alone be sufficient evidence to charge any person with liability

Illustration

A sues B for Rs 1 000 and shows entries in his account books showing B to be indebted to him to this amount. The entries are relevant, but are not sufficient, without other evidence to prove the debt

Relevancy
of entry in
public re-
cord made
in perform-
ance of duty

35 An entry in any public or other official book, register or record, stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register or record is kept, is itself a relevant fact

Relevancy of
statements
in maps,
charts and
plans

36 Statements of facts in issue or relevant facts, made in published maps or charts generally offered for public sale, or in maps or plans made under the authority of ²[any Government in British India], as to matters usually represented or stated in such maps, charts or plans, are themselves relevant facts

Relevancy of
statement
as to fact of
public
nature

37 When the Court has to form an opinion as to the existence of any fact of a public nature, any statement of it, made in a recital contained in any Act of Parliament, or in any ³[Act of the Central Legis-

¹ Cf. s. 240 of the Indian Companies Act, 1913 (7 of 1913), and Sch. I, Order VII, rule 17 of the Code of Civil Procedure, 1908 (Act 5 of 1908). As to admissibility in evidence of certified copies of entries in Bankers' books, see s. 4 of the Bankers' Books Evidence Act, 1891 (18 of 1891)

² S. 11 by the A. O. for 'Govt'

³ S. 11 by the A. O. for "Act of the G. G. of India in C."

(Chapter II Of the Relevancy of Facts)

lature], or of ¹[any other Legislative authority in British India con- contained in
stituted by any laws for the time being in force or in a Government certain Acts
notification or notification by the Crown Representative appearing in or notifica-
the Official Gazette or in any printed paper purporting to be the London tions
Gazette or the Government Gazette of any Dominion colony or posses-
sion of His Majesty is a relevant fact.]

2.

38 When the Court has to form an opinion as to a law of any coun Relevancy of
try any statement of such law contained in a book purporting to be statements
printed or published under the authority of the Government of such as to
country and to contain any such law and any report of a ruling of the any law
Courts of such country contained in a book purporting to be a report of contained in
such rulings is relevant law books

HOW MUCH OF A STATEMENT IS TO BE PROVED

39 When any statement of which evidence is given forms part of a What evi-
longer statement, or of a conversation or part of an isolated document, dence to be
or is contained in a document which forms part of a book, or of a con- given when
nected series of letters or papers, evidence shall be given of so much and statement
no more of the statement, conversation, document, book or series of forms part
letters or papers as the Court considers necessary in that particular case of a conver-
to the full understanding of the nature and effect of the statement, and sation docu-
of the circumstances under which it was made ment book
or series of
papers

JUDGMENTS OF COURTS OF JUSTICE WHEN RELEVANT

40 The existence of any judgment, order or decree which by law Previous
prevents any Court from taking cognizance of a suit or holding a trial, judgments
is a relevant fact when the question is whether such Court ought to relevant to
take cognizance of such suit or to hold such trial bar a second
suit or trial

¹ The original words were "the Governors in Council of Madras or Bombay, or of the Lieutenant Governor in Council of Bengal or in a notification of the Govt appearing in the Gazette of India, or in the Gazette of any L. G., or in any printed paper purporting to be the London Gazette or the Govt Gazette of any colony or possession of the Queen is a relevant fact." This was amended first by the Repealing and Amending Act 1914 (10 of 1914) and then by the A. O. to read as above

² The last paragraph was rep. by the Repealing and Amending Act, 1914 (10 of 1914)

(Chapter II —Of the Relevancy of Facts)

Relevancy
of certain
judgments
in probate,
etc
jurisdiction

41 A final judgment, order or decree of a competent Court, in the exercise of probate, matrimonial, admiralty or insolvency jurisdiction, which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person but absolutely, is relevant when the existence of any such legal character, or the title of any such person to any such thing, is relevant

Such judgment order or decree is conclusive proof—

that any legal character which it confers accrued at the time when such judgment, order or decree came into operation,

that any legal character to which it declares any such person to be entitled, accrued to that person at the time when such judgment ¹[order or decree] declares it to have accrued to that person,

that any legal character which it takes away from any such person ceased at the time from which such judgment, ¹[order or decree] declared that it had ceased or should cease,

and that anything to which it declares any person to be so entitled was the property of that person at the time from which such judgment, ¹[order or decree] declares that it had been or should be his property

Relevancy
and effect of
judgments,
orders or
decrees,
other
than those
mentioned in
section 41

42 Judgments, orders or decrees other than those mentioned in section 41 are relevant if they relate to matters of a public nature relevant to the enquiry, but such judgments, orders or decrees are not conclusive proof of that which they state

Illustration

A sues B for trespass on his land B alleges the existence of a public right of way over the land, which A denies.

The existence of a decree in favour of the defendant, in a suit by A against C for a trespass on the same land in which C alleged the existence of the same right of way, is relevant but it is not conclusive proof that the right of way exists

Judgments,
etc., other
than those
mentioned in
sections 40
to 43, when
relevant.

43 Judgments, orders or decrees, other than those mentioned in sections 40, 41 and 42, are irrelevant, unless the existence of such judgment, order or decree is a fact in issue, or is relevant under some other provision of this Act

Illustrations

(a) A and B separately sue C for a libel which reflects upon each of them. C in each case says that the matter alleged to be libellous is true, and the circumstances are such that it is probably true in each case, or in neither

A obtains a decree against C for damages on the ground that C failed to make out his justification. The fact is irrelevant as between B and C

(b) A prosecutes B for a adultery with C, A's wife

¹ Ins by s 3 of the Indian Evidence Act Amendment Act (18 of 1872)

(Chapter II —Of the Relevancy of Facts)

B denies that C is A's wife but the Court convicts B of adultery

Afterwards C is prosecuted for bigamy in marrying B during A's lifetime C says that she never was A's wife

The judgment against B is irrelevant as against C

(c) A prosecutes B for stealing a cow from him B is convicted

A afterwards sues C for the cow, which B had sold to him before his conviction As between A and C the judgment against B is irrelevant

(d) A has obtained a decree for the possession of land against B C, B's son, murders A in consequence

The existence of the judgment is relevant as showing motive for a crime

¹ [(e) A is charged with theft and with having been previously convicted of theft The previous conviction is relevant as a fact in issue

(f) A is tried for the murder of B The fact that B prosecuted A for libel and that A was convicted and sentenced is relevant under section 8 as showing the motive for the fact in issue]

44 Any party to a suit or other proceeding may show that any judgment, order or decree which is relevant under section 40, 41 or 42, and which has been proved by the adverse party, was delivered by a Court not competent to deliver it, or was obtained by fraud or collusion

Fraud or collusion in obtaining judgment, or incompetency of Court may be proved

OPINIONS OF THIRD PERSONS WHEN RELEVANT

45 When the Court has to form an opinion upon a point of foreign law or of science, or art, or as to identity of handwriting ²[or finger impressions], the opinions upon that point of persons specially skilled in such foreign law, science or art, ³[or in questions as to identity of handwriting] ²[or finger impressions] are relevant facts

Opinions of experts

Such persons are called experts

Illustrations

(a) The question is whether the death of A was caused by poison The opinion of experts as to the symptoms produced by the poison by which A is supposed to have died are relevant

(b) The question is whether A at the time of doing a certain act was, by reason of unsoundness of mind, incapable of knowing the nature of the act, or that he was doing what was either wrong or contrary to law

The opinions of experts upon the question whether the symptoms exhibited by A commonly show unsoundness of mind and whether such unsoundness of mind usually renders persons incapable of knowing the nature of the acts which they do, or of knowing that what they do is either wrong or contrary to law, are relevant

(c) The question is whether a certain document was written by A Another document is produced which is proved or admitted to have been written by A

The opinions of experts on the question whether the two documents were written by the same person or by different persons are relevant

¹ Ins by the Indian Evidence Act (1872) Amendment Act, 1891 (3 of 1891) s 5

² Ins by the Indian Evidence Act 1899 (5 of 1899) s 3 For discussion in Council as to whether finger impressions include thumb impressions," see Gazette of India 1898 Pt VI, p 24

³ Ins by s 4 of the Indian Evidence Act Amendment Act (18 of 1872)

(Chapter II —Of the Relevancy of Facts)

Facts bearing upon opinions of experts

46 Facts, not otherwise relevant, are relevant if they support or are inconsistent with the opinions of experts, when such opinions are relevant

Illustrations

(a) The question is, whether A was poisoned by a certain poison

The fact that other persons, who were poisoned by that poison, exhibited certain symptoms which experts affirm or deny to be the symptoms of that poison, is relevant

(b) The question is, whether an obstruction to a harbour is caused by a certain sea wall

The fact that other harbours similarly situated in other respects, but where there were no such sea walls began to be obstructed at about the same time, is relevant

Opinion as to handwriting when relevant

47 When the Court has to form an opinion as to the person by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed that it was or was not written or signed by that person, is a relevant fact

Explanation —A person is said to be acquainted with the handwriting of another person when he has seen that person write, or when he has received documents purporting to be written by that person in answer to documents written by himself or under his authority and addressed to that person, or when in the ordinary course of business, documents purporting to be written by that person have been habitually submitted to him

Illustration

The question is, whether a given letter is in the handwriting of A a merchant in London

B is a merchant in Calcutta who has written letters addressed to A and received letters purporting to be written by him C is B's clerk whose duty it was to examine and file B's correspondence D is B's broker, to whom B habitually submitted the letters purporting to be written by A for the purpose of advising with him thereon.

The opinions of B C and D on the question whether the letter is in the handwriting of A are relevant, though neither B, C or D ever saw A write

Opinion as to existence of right or custom when relevant

48 When the Court has to form an opinion as to the existence of any general custom or right, the opinions, as to the existence of such custom or right, of persons who would be likely to know of its existence if it existed, are relevant

Explanation —The expression "general custom or right" includes customs or rights common to any considerable class of persons

Illustration

The right of the villagers of a particular village to use the water of a particular well is a general right within the meaning of this section

(Chapter II—Of the Relevancy of Facts)

49 When the Court has to form an opinion as to—
 the usages and tenets of any body of men or family,
 the constitution and government of any religious or charitable found-
 ation or

Opinion as
to usages
tenets etc
when
relevant

the meaning of words or terms used in particular districts or by particular classes of people,

the opinions of persons having special means of knowledge thereon,
 are relevant facts

50 When the Court has to form an opinion as to the relationship of one person to another, the opinion, expressed by conduct, as to the existence of such relationship, of any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is a relevant fact

Opinion on
relationship
when
relevant

Provided that such opinion shall not be sufficient to prove a marriage in proceedings under the Indian Divorce Act, or in prosecutions under section 494, 495, 497 or 498 of the Indian Penal Code

Illustrations

- (a) The question is whether A and B were married
 The fact that they were usually received and treated by their friends as husband and wife is relevant
- (b) The question is whether A was the legitimate son of B The fact that A was always treated as such by members of the family, is relevant

51 Whenever the opinion of any living person is relevant, the grounds on which such opinion is based are also relevant

Grounds
of opinion
when
relevant

Illustration

An expert may give an account of experiments performed by him for the purpose of forming his opinion

CHARACTER WHEN RELEVANT

52 In civil cases the fact that the character of any person concerned is such as to render probable or improbable any conduct imputed to him is irrelevant, except in so far as such character appears from facts otherwise relevant

In civil
cases
character
to prove
conduct
imputed
irrelevant

53 In criminal proceedings the fact that the person accused is of a good character is relevant

In criminal
cases pre-
vious good
character
relevant

(Chapter II — Of the Relevancy of Facts Chapter III — Facts which need not be proved)

Previous bad character not relevant, except in reply

¹[54 In criminal proceedings the fact that the accused person has a bad character is irrelevant, unless evidence has been given that he has a good character, in which case it becomes relevant

Explanation 1 — This section does not apply to cases in which the bad character of any person is itself a fact in issue

Explanation 2 — A previous conviction is relevant as evidence of bad character]

Character as affecting damages

55 In civil cases the fact that the character of any person is such as to affect the amount of damages which he ought to receive, is relevant

Explanation — In sections 52, 53, 54 and 55, the word "character" includes both reputation and disposition, but, ²[except as provided in section 54] evidence may be given only of general reputation and general disposition, and not of particular acts by which reputation or disposition were shown

PART II

ON PROOF

CHAPTER III

FACTS WHICH NEED NOT BE PROVED

Fact judicially noticeable need not be proved

56 No fact of which the Court will take judicial notice need be proved

Facts of which Court must take judicial notice

57 The Court shall take judicial notice of the following facts —

³[(1) All Indian laws]

(2) All public Acts passed or hereafter to be passed by Parliament, and all local and personal Acts directed by Parliament to be judicially noticed

(3) Articles of War for Her Majesty's Army ⁴[Navy or Air Force]

(4) The course of proceeding of Parliament and ⁵[of the legislatures established under any laws for the time being in force in British India]

¹ Subs by the Indian Evidence Act (1872) Amendment Act, 1891 (3 of 1891), s 6 for the original section

² Ins by s 7, *ibid*

³ Subs by the A O for the original para (1)

⁴ Subs by the Repealing and Amending Act 1927 (10 of 1927) s 2 and Sch I, for or Navy

⁵ Subs by the A O for of the Councils for the purposes of making Laws and Regulations established under the Indian Councils Act or any other law for the time being relating thereto

(Chapter III —Facts which need not be proved)

Explanation—The word Parliament in clauses (2) and (4) includes—

- (1) the Parliament of the United Kingdom of Great Britain and Ireland,
- (2) the Parliament of Great Britain
- (3) the Parliament of England
- (4) the Parliament of Scotland and
- (5) the Parliament of Ireland

(5) The accession and the sign manual of the Sovereign for the time being of the United Kingdom of Great Britain and Ireland

(6) All seals of which English Courts take judicial notice the seals of all the Courts of British India and of all Courts out of British India, established by the authority of ¹[the Central Government or the Crown representative] the seals of Courts of Admiralty and Maritime Jurisdiction and of Notaries Public and all seals which any person is authorized to use by any Act of Parliament or other Act or Regulation having the force of law in British India

(7) The accession to office names titles functions and signatures of the persons filling for the time being any public office in any part of British India if the fact of their appointment to such office is notified in ²[any Official Gazette]

(8) The existence title and national flag of every State or Sovereign recognized by the British Crown³

(9) The divisions of time the geographical divisions of the world, and public festivals fasts and holidays notified in the Official Gazette

(10) The territories under the dominion of the British Crown

(11) The commencement continuance and termination of hostilities between the British Crown and any other State or body of persons

(12) The names of the members and officers of the Court and of their deputies and subordinate officers and assistants and also of all officers acting in execution of its process and of all advocate attorneys prosecutors vakils pleaders and other persons authorized by law to appear or act before it

¹ Subs by the A O for the C G or any L G in Council.

² Subs by the A O for the Gazette of India or in the official Gazette of any L G

³ See also the Code of Civil Procedure 1908 (5 of 1908) s 84 (c) under which every court is required to take judicial notice of the fact that a foreign State has or has not been recognized by His Majesty or the Central Government

(Chapter III — Facts which need not be proved Chapter IV — Of Oral Evidence)

(13) The rule of the road ¹[on land or at sea]

In all these cases and also on all matters of public history, literature, science or art, the Court may resort for its aid to appropriate books or documents of reference

If the Court is called upon by any person to take judicial notice of any fact, it may refuse to do so unless and until such person produces any such book or document as it may consider necessary to enable it to do so

Facts admitted need not be proved

58 No fact need be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing they agree to admit by any writing under their hands, or which by any rule or pleading in force at the time they are deemed to have admitted by their pleadings

Provided that the Court may in its discretion, require the facts admitted to be proved otherwise than by such admissions

CHAPTER IV

OF ORAL EVIDENCE

Proof of facts by oral evidence

59 All facts except the contents of documents may be proved by oral evidence

Oral evidence must be direct.

60 Oral evidence must, in all cases whatever, be direct, that is to say—

if it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it,

if it refers to a fact which could be heard, it must be the evidence of a witness who says he heard it

if it refers to a fact which could be perceived by any other sense or in any other manner, it must be the evidence of a witness who says he perceived it by that sense or in that manner,

if it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds

¹ Ins. by the Indian Evidence Act Amendment Act (18 of 1872) s. 5

(Chapter IV—Of Oral Evidence Chapter V—Of Documentary Evidence)

Provided that the opinions of experts expressed in any treatise commonly offered for sale, and the grounds on which such opinions are held, may be proved by the production of such treatises if the author is dead or cannot be found, or has become incapable of giving evidence, or cannot be called as a witness without an amount of delay or expense which the Court regards as unreasonable

Provided also that, if oral evidence refers to the existence or condition of any material thing other than a document, the Court may, if it thinks fit require the production of such material thing for its inspection

CHAPTER V

OF DOCUMENTARY EVIDENCE

61 The contents of documents may be proved either by primary or by secondary evidence

Proof of contents of documents
Primary evidence

62 Primary evidence means the document itself produced for the inspection of the Court

Explanation 1—Where a document is executed in several parts, each part is primary evidence of the document

Where a document is executed in counterpart each counterpart being executed by one or some of the parties only, each counterpart is primary evidence as against the parties executing it

Explanation 2—Where a number of documents are all made by one uniform process as in the case of printing lithography or photography, each is primary evidence of the contents of the rest, but, where they are all copies of a common original, they are not primary evidence of the contents of the original

Illustration

A person is shown to have been in possession of a number of placards all printed at one time from one original. Any one of the placards is primary evidence of the contents of any other but no one of them is primary evidence of the contents of the original

63 Secondary evidence means and includes—

- (1) certified copies given under the provisions hereinafter contained,¹
- (2) copies made from the original by mechanical processes which in themselves insure the accuracy of the copy, and which are compared with such copies,

Secondary evidence

(Chapter V —Of Documentary Evidence)

- (3) copies made from or compared with the original ,
- (4) counterparts of documents as against the parties who did not execute them
- (5) oral accounts of the contents of a document given by some person who has himself seen it

Illustrations

(a) A photograph of an original is secondary evidence of its contents, though the two have not been compared, if it is proved that the thing photographed was the original

(b) A copy compared with a copy of a letter made by a copying machine is secondary evidence of the contents of the letter, if it is shown that the copy made by the copying machine was made from the original

(c) A copy transcribed from a copy but afterwards compared with the original is secondary evidence but the copy not so compared is not secondary evidence of the original although the copy from which it was transcribed was compared with the original

(d) Neither an oral account of a copy compared with the original nor an oral account of a photograph or machine copy of the original is secondary evidence of the original

Proof of documents by primary evidence

64 Documents must be proved by primary evidence except in the cases hereinafter mentioned

Cases in which secondary evidence relating to documents may be given

65 Secondary evidence may be given of the existence, condition or contents of a document in the following cases —

- (a) when the original is shown or appears to be in the possession or power—

of the person against whom the document is sought to be proved, or of any person out of reach of, or not subject to, the process of the Court, or

of any person legally bound to produce it, and when, after the notice mentioned in section 66, such person does not produce it,

- (b) when the existence condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest,

- (c) when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time,

- (d) when the original is of such a nature as not to be easily moveable,

(Chapter V—Of Documentary Evidence)

- (e) when the original is a public document within the meaning of section 74,
- (f) when the original is a document of which a certified copy is permitted by this Act, or by any other law in force in British India, to be given in evidence,¹
- (g) when the originals consist of numerous accounts or other documents which cannot conveniently be examined in Court, and the fact to be proved is the general result of the whole collection

In cases (a), (c) and (d), any secondary evidence of the contents of the document is admissible

In case (b), the written admission is admissible

In case (e) or (f), a certified copy of the document, but no other kind of secondary evidence, is admissible

In case (g), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such documents

66 Secondary evidence of the contents of the documents referred to in section 65, clause (a), shall not be given unless the party proposing to give such secondary evidence has previously given to the party in whose possession or power the document is, ²[or to his attorney or pleader,] such notice to produce it as is prescribed by law, and if no notice is prescribed by law then such notice as the Court considers reasonable under the circumstances of the case

Rules as to
notice to
produce

Provided that such notice shall not be required in order to render secondary evidence admissible in any of the following cases, or in any other case in which the Court thinks fit to dispense with it —

- (1) when the document to be proved is itself a notice,
- (2) when, from the nature of the case, the adverse party must know that he will be required to produce it,
- (3) when it appears or is proved that the adverse party has obtained possession of the original by fraud or force,
- (4) when the adverse party or his agent has the original in Court,
- (5) when the adverse party or his agent has admitted the loss of the document,
- (6) when the person in possession of the document is out of reach of, or not subject to, the process of the Court

¹ C/ the Bankers Books Evidence Act 1891 (18 of 1891) s. 4

² Ins by the Indian Evidence Act Amendment Act (18 of 1872) s. 6.

(Chapter V —Of Documentary Evidence)

Proof of
signature
and hand
writing of
person
alleged to
have signed
or written
document
produced

67 If a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting of so much of the document as is alleged to be in that person's handwriting must be proved to be in his handwriting

Proof of
execution of
document
required by
law to be
attested

68 If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence

¹[Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908, unless its execution by the person by whom it purports to have been executed is specifically denied]

Proof
where no
attesting
witness
found

69 If no such attesting witness can be found, or if the document purports to have been executed in the United Kingdom, it must be proved that the attestation of one attesting witness at least is in his handwriting, and that the signature of the person executing the document is in the handwriting of that person

Admission
of execu-
tion by
party
to attested
document

70 The admission of a party to an attested document of its execution by himself shall be sufficient proof of its execution as against him, though it be a document required by law to be attested

Proof when
attesting
witness
denies the
execution
Proof of
document
not required
by law to be
attested

71 If the attesting witness denies or does not recollect the execution of the document, its execution may be proved by other evidence

72 An attested document not required by law to be attested may be proved as if it was unattested

Comparison
of signature
writing or
seal with
others
admitted
or proved

73 In order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made, any signature, writing or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing or seal has not been produced or proved for any other purpose

¹ Ins by s 2 of the Indian Evidence (Amendment) Act, 1926 (31 of 1926)

(Chapter V --Of Documentary Evidence)

The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person

¹[This section applies also, with any necessary modifications, to finger impressions]

PUBLIC DOCUMENTS

74 The following documents are public documents —

Public
documents

(1) documents forming the acts or records of the acts—

(i) of the sovereign authority,

(ii) of official bodies and tribunals, and

(iii) of public officers, legislative, judicial and executive, whether of British India, or of any other part of Her Majesty's dominions or of a foreign country,

(2) public records kept in British India of private documents

75 All other documents are private.

Private
documents

76. ²Every public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees therefor, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorized by law to make use of a seal and such copies so certified shall be called certified copies.

Explanation — Any officer who, by the ordinary course of official duty, is authorized to deliver such copies, shall be deemed to have the custody of such documents within the meaning of this section

77 Such certified copies may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies

Proof of
documents
by
production
of certified
copies

¹ Ins. by the Indian Evidence Act 1899 (5 of 1899)

² A village officer in the Punjab has been declared for the purposes of this Act to be a public officer having the custody of a public document—see the Punjab Land revenue Act, 1887 (17 of 1887), s. 151 (2)

(Chapter V —Of Documentary Evidence.)

Proof of
other official
documents

78 The following public documents may be proved as follows —

- (1) Acts, orders or notifications of ¹[the Central Government] in any of its departments, ²[or of the Crown Representative] or of any ³[Provincial Government] or any department of any ³[Provincial Government]—

by the records of the departments, certified by the heads of those departments respectively,

or by any document purporting to be printed by order of any such Government ²[or, as the case may be, of the Crown Representative]

- (2) the proceedings of the Legislatures,—

by the journals of those bodies respectively, or by published Acts or abstracts, or by copies purporting to be printed ⁴[by order of the Government concerned]

- (3) proclamations orders or regulations issued by Her Majesty or by the Privy Council, or by any department of Her Majesty's Government,—

by copies or extracts contained in the London Gazette, or purporting to be printed by the Queen's Printer

- (4) the Acts of the Executive or the proceedings of the Legislature of a foreign country,—by journals published by their authority, or commonly received in that country as such, or by a copy certified under the seal of the country or sovereign, or by a recognition thereof in some ⁵[Central Act]

- (5) the proceedings of a municipal body in British India,—

by a copy of such proceedings, certified by the legal keeper thereof, or by a printed book purporting to be published by the authority of such body

- (6) public documents of any other class in a foreign country,—

by the original, or by a copy certified by the legal keeper thereof, with a certificate under the seal of a notary public, or of a British Consul or diplomatic agent, that

¹ Subs by the A O for the Executive Government of British India'

² Ins by the A O

³ Subs by the A O for 'L G'

⁴ Subs by the A. O for 'by order of Government.

⁵ Subs by the A O for public Act of the G G of India in C For definition of 'Central Act' see the General Clauses Act, 1897 (10 of 1897), s 3 (§ aa)

(Chapter V—Of Documentary Evidence)

the copy is duly certified by the officer having the legal custody of the original and upon proof of the character of the document according to the law of the foreign country

PRESUMPTIONS AS TO DOCUMENTS

79 The Court shall presume every document purporting to be a certificate certified copy or other document which is by law declared to be admissible as evidence of any particular fact and which purports to be duly certified by any officer in British India or by any officer in any ¹[Indian State] who is duly authorized thereto by ²[the Central Government or the Crown Representative] to be genuine

Presumption
as to
genuineness
of certified
copies

Provided that such document is substantially in the form and purports to be executed in the manner directed by law in that behalf

The Court shall also presume that any officer by whom any such document purports to be signed or certified held when he signed it the official character which he claims in such paper

80 Whenever any document is produced before any Court purporting to be a record or memorandum of the evidence or of any part of the evidence given by a witness in a judicial proceeding or before any officer authorized by law to take such evidence or to be a statement or confession by any prisoner or accused person taken in accordance with law and purporting to be signed by any Judge or Magistrate, or by any such officer as aforesaid the Court shall presume—

Presumption
as to
documents
produced
as record of
evidence

that the document is genuine that any statements as to the circumstances under which it was taken purporting to be made by the person signing it are true and that such evidence statement or confession was duly taken

81 The Court shall presume the genuineness of every document purporting to be the London Gazette or ³[any Official Gazette or the Government Gazette] of any colony dependency or possession of the British Crown or to be a newspaper or journal or to be a copy of a private Act of Parliament printed by the Queen's Printer and of every document purporting to be a document directed by any law to be kept by any person if such document is kept substantially in the form required by law and is produced from proper custody

Presumption
as to
Gazettes
news
papers
private
Acts of
Parliament
and other
documents.

¹ Subs. by th. A. O. for Native State in allance wth Her Majesty

² Subs. by the A. O. for the G. C. in C.

³ Subs. by the A. O. for the Gazette of India or the Government Gazette of any L. C. or

(Chapter I —Of Documentary Evidence)

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Presumption
as to
document
admissible
in England
without
proof
of seal or
signature

82 When any document is produced before any Court, purporting to be a document which by the law in force for the time being in England and Ireland would be admissible in proof of any particular in any Court of Justice in England or Ireland without proof of the seal or stamp or signature authenticating it or of the judicial or official character claimed by the person by whom it purports to be signed, the Court shall presume that such seal stamp or signature is genuine, and that the person signing it held at the time when he signed it, the judicial or official character which he claims

and the document shall be admissible for the same purpose for which it would be admissible in England or Ireland

Presumption
as to maps
or plans
made by
authority of
Government

83 The Court shall presume that maps or plans purporting to be made by the authority of ¹[any Government in British India] were so made and are accurate but maps or plans made for the purposes of any cause must be proved to be accurate

Presumption
as to collec-
tions of laws
and reports
of decisions

84 The Court shall presume the genuineness of every book purporting to be printed or published under the authority of the Government of any country and to contain any of the laws of that country

and of every book purporting to contain reports of decisions of the Courts of such country

Presumption
as to powers
of attorney

85 The Court shall presume that every document purporting to be a power of attorney and to have been executed before and authenticated by a notary public or any Court Judge Magistrate, British Consul or Vice Consul or representative of Her Majesty or of the ²[Central Government] was so executed and authenticated

Presumption
as to
certified
copies of
foreign judi-
cial records

86 The Court may presume that any document purporting to be a certified copy of any judicial record of any country not forming part of Her Majesty's dominions is genuine and accurate if the document purports to be certified in any manner which is certified by any representative of Her Majesty or of the ²[Central Government] ³[in or for] such country to be the manner commonly in use in that country for the certification of copies of judicial records

⁴[An officer who with respect to any territory or place not forming part of Her Majesty's dominions is a Political Agent therefor as defined

¹ Subs by the A O for Government

² Subs by the A O for G of I

³ Subs by s 8 of the Indian Evidence Act (1872) Amendment Act 1891 (3 of 1891) for resident in

⁴ Subs by s 4 of the Indian Evidence Act 1899 (5 of 1899) for the paragraph added by s 8 of the Indian Evidence Act (1872) Amendment Act 1891 (3 of 1891)

(Chapter V—Of Documentary Evidence)

in section 3 clause (40) of the General Clauses Act 1897 shall for the purposes of this section, be deemed to be a representative of the ¹[Central Government] in and for the country comprising that territory or place]

87 The Court may presume that any book to which it may refer for information on matters of public or general interest and that any published map or chart the statements of which are relevant facts and which is produced for its inspection was written and published by the person and at the time and place by whom or at which it purports to have been written or published

Presumption
as to books,
maps and
charts

88 The Court may presume that a message forwarded from a telegraph office to the person to whom such message purports to be addressed, corresponds with a message delivered for transmission at the office from which the message purports to be sent but the Court shall not make any presumption as to the person by whom such message was delivered for transmission

Presumption
as to
telegraphic
messages

89 The Court shall presume that every document called for and not produced after notice to produce was attested stamped and executed in the manner required by law

Presumption
as to due
execution
etc., of
documents
not
produced

90 Where any document, purporting or proved to be thirty years old, is produced from any custody which the Court in the particular case considers proper the Court may presume that the signature and every other part of such document which purports to be in the hand writing of any particular person is in that person's handwriting, and, in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested

Presumption
as to
documents
thirty years
old

Explanation—Documents are said to be in proper custody if they are in the place in which and under the care of the person with whom they would naturally be but no custody is improper if it is proved to have had a legitimate origin, or if the circumstances of the particular case are such as to render such an origin probable

This explanation applies also to section 81

Illustrations

(a) A has been in possession of landed property for a long time. He produces from his custody deeds relating to the land showing his titles to it. The custody is proper

(b) A produces deeds relating to landed property of which he is the mortgagee. The mortgagee is in possession. The custody is proper

(c) A in connection of B produces deeds relating to lands in B's possession which were deposited with him by B for safe custody. The custody is proper

(Chapter VI —Of the Exclusion of Oral by Documentary Evidence)

CHAPTER VI

OF THE EXCLUSION OF ORAL BY DOCUMENTARY EVIDENCE

Evidence of terms of contracts grants and other dispositions of property reduced to form of document

91 When the terms of a contract, or of a grant, or of any other disposition of property have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence¹ shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained

Exception 1 —When a public officer is required by law to be appointed in writing, and when it is shown that any particular person has acted as such officer the writing by which he is appointed need not be proved

Exception 2 —Wills ²[admitted to probate in British India] may be proved by the probate

Explanation 1 —This section applies equally to cases in which the contracts, grants or dispositions of property referred to are contained in one document and to cases in which they are contained in more documents than one

Explanation 2 —Where there are more originals than one, one original only need be proved

Explanation 3 —The statement, in any document whatever, of a fact other than the facts referred to in this section, shall not preclude the admission of oral evidence as to the same fact

Illustrations

(a) If a contract be contained in several letters all the letters, in which it is contained must be proved

(b) If a contract is contained in a bill of exchange, the bill of exchange must be proved

(c) If a bill of exchange is drawn in a set of three, one only need be proved

(d) A contracts in writing with B for the delivery of indigo upon certain terms. The contract mentions the fact that B had said A the price of other indigo contracted for verbally on another occasion

Oral evidence is offered that no payment was made for the other indigo. The evidence is admissible

¹ Where, however, a Criminal Court finds that a confession or other statement of an accused person has not been recorded in manner prescribed, evidence may be taken that the recorded statement was duly made—see the Code of Criminal Procedure, 1898 (Act 5 of 1898), s. 530

² Subs. by s. 7 of the Indian Evidence Act Amendment Act (18 of 1872) for "under the Indian Succession Act"

(Chapter VI.—Of the Exclusion of Oral by Documentary Evidence.)

(c) A gives B a receipt for money paid by B

Oral evidence is offered of the payment

The evidence is admissible

92 When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms

Exclusion of evidence of oral agreement

Proviso (1) —Any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto, such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, ¹[want or failure] of consideration, or mistake in fact or law

Proviso (2) —The existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms may be proved. In considering whether or not this proviso applies, the Court shall have regard to the degree of formality of the document

Proviso (3) —The existence of any separate oral agreement, constituting a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property, may be proved

Proviso (4) —The existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant or disposition of property, may be proved, except in cases in which such contract, grant or disposition of property is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of documents

Proviso (5).—Any usage or custom by which incidents not expressly mentioned in any contract are usually annexed to contracts of that description, may be proved :

Provided that the annexing of such incident would not be repugnant to, or inconsistent with, the express terms of the contract.

Proviso (6) —Any fact may be proved which shows in what manner the language of a document is related to existing facts

¹ Subs. by s. 8 of the Indian Evidence Act Amendment Act (19 of 1872) for "want of failure".

(Chapter VI—Of the Exclusion of Oral by Documentary Evidence.)

Illustrations

(a) A policy of insurance is effected on goods in ships from Calcutta to London. The goods are shipped in a particular ship which is lost. The fact that that particular ship was orally excepted from the policy cannot be proved.

(b) A agrees absolutely in writing to pay B Rs 1,000 on the first March 1873. The fact that at the same time an oral agreement was made that the money should not be paid till the thirty first March cannot be proved.

(c) An estate called 'the Rimpore ten estate' is sold by a deed which contains a map of the property sold. The fact that land not included in the map had always been regarded as part of the estate and was meant to pass by the deed cannot be proved.

(d) A enters into a written contract with B to work certain mines, the property of B upon certain terms. A was induced to do so by a misrepresentation of B's as to their value. This fact may be proved.

(e) A institutes a suit against B for the specific performance of a contract, and also prays that the contract may be reformed as to one of its provisions as that provision was inserted in it by mistake. A may prove that such a mistake was made as would by law entitle him to have the contract reformed.

(f) A orders goods of B by a letter in which nothing is said as to the time of payment and accepts the goods on delivery. B sues A for the price. A may show that the goods were supplied on credit for a term still unexpired.

(g) A sells B a horse and verbally warrants him sound. A gives B a paper in these words: 'Bought of A a horse for Rs 500.' B may prove the verbal warranty.

(h) A hires lodgings of B and gives a card on which is written—'Rooms Rs 200 a month.' A may prove a verbal agreement that these terms were to include partial board.

A hires lodgings of B for a year, and a regularly stamped agreement, drawn up by an attorney is made between them. It is silent on the subject of board. A may not prove that board was included in the term verbally.

(i) A applies to B for a debt due to A by sending a receipt for the money. B keeps the receipt and does not send the money. In a suit for the amount A may prove this.

(ii) A and B make a contract in writing to take effect upon the happening of a certain contingency. The writing is left with B who sues A upon it. A may show the circumstances under which it was delivered.

Exclusion of evidence to explain or amend ambiguous document

93 When the language used in a document is, on its face, ambiguous or defective, evidence may not be given of facts which would show its meaning or supply its defects.

Illustrations

(a) A agrees in writing to sell a horse to B for Rs 1,000 or Rs 1,500.

Evidence cannot be given to show which price was to be given.

(b) A deed contains blanks. Evidence cannot be given of facts which would show how they were meant to be filled.

Exclusion of evidence against application of document to existing facts

94 When language used in a document is plain in itself and when it applies accurately to existing facts, evidence may not be given to show that it was not meant to apply to such facts.

Illustration

A sells to B by deed 'my estate at Rimpur containing 100 bighás'. A has an estate at Rimpur containing 100 bighás. Evidence may not be given of the fact that the estate meant to be sold was one situated at a different place and of a different size.

(Chapter VI.—Of the Exclusion of Oral by Documentary Evidence)

95. When language used in a document is plain in itself, but is unmeaning in reference to existing facts, evidence may be given to show that it was used in a peculiar sense

Evidence as to document unmeaning in reference to existing facts

Illustration

A sells to B, by deed, "my house in Calcutta"

A had no house in Calcutta, but it appears that he had a house at Howrah, of which B had been in possession since the execution of the deed

These facts may be proved to show that the deed related to the house at Howrah

96. When the facts are such that the language used might have been meant to apply to any one, and could not have been meant to apply to more than one, of several persons or things, evidence may be given of facts which show which of those persons or things it was intended to apply to.

Evidence as to application of language which can apply to one only of several persons

Illustrations

(a) A agrees to sell to B, for Rs 1,000 "my white horse" A has two white horses. Evidence may be given of facts which show which of them was meant

(b) A agrees to accompany B to Haidarabad. Evidence may be given of facts showing whether Haidarabad in the Dekkhan or Haidarabad in Sind was meant

97. When the language used applies partly to one set of existing facts, and partly to another set of existing facts, but the whole of it does not apply correctly to either, evidence may be given to show to which of the two it was meant to apply.

Evidence as to application of language to one of two sets of facts, to neither of which the whole correctly applies

Illustration

A agrees to sell to B "my land at X in the occupation of Y" A has land at X, but not in the occupation of Y, and he has land in the occupation of Y, but it is not at X. Evidence may be given of facts showing which he meant to sell

98. Evidence may be given to show the meaning of illegible or not commonly intelligible characters, of foreign, obsolete, technical, local and provincial expressions, of abbreviations and of words used in a peculiar sense.

Evidence as to meaning of illegible characters, etc.

Illustration

A, sculptor, agrees to sell to B, "all my mods" A has both models and modelling tools. Evidence may be given to show which he meant to sell.

99. Persons who are not parties to a document, or their representatives in interest, may give evidence of any facts tending to show a contemporaneous agreement varying the terms of the document.

Who may give evidence of agreement varying terms of document.

Illustration

A and B make a contract in writing that B shall sell A certain cotton, to be paid for on delivery. At the same time they make an oral agreement that three months' credit shall be given to A. This could not be shown as between A and B, but it might be shown by C, if it affected his interests

100. Nothing in this Chapter contained shall be taken to affect any of the provisions of the Indian Succession Act (X of 1865)¹ as to the construction of wills.

Saving of provisions of Indian Succession Act relating to wills

¹ See now the Indian Succession Act, 1925 (39 of 1925), Pt. VI, Ch. VI.

(Chapter VII—Of the Burden of Proof.)

PART III.

PRODUCTION AND EFFECT OF EVIDENCE

CHAPTER VII.

OF THE BURDEN OF PROOF.

Burden of
proof

101 Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist.

When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

Illustrations.

(a) A desires a Court to give judgment that B shall be punished for a crime which A says B has committed

A must prove that B has committed the crime

(b) A desires a Court to give judgment that he is entitled to certain land in the possession of B, by reason of facts which he asserts, and which B denies, to be true

A must prove the existence of those facts

On whom
burden of
proof lies

102 The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side

Illustrations.

(a) A sues B for land of which B is in possession, and which, as A asserts, was left to A by the will of C, B's father

If no evidence were given on either side, B would be entitled to retain his possession

Therefore the burden of proof is on A

(b) A sues B for money due on a bond

The execution of the bond is admitted, but B says that it was obtained by fraud, which A denies

If no evidence were given on either side A would succeed as the bond is not disputed and the fraud is not proved

Therefore the burden of proof is on B

Burden of
proof as to
particular
fact

103 The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person

Illustration.

1(a) A prosecutes B for theft, and wishes the Court to believe that B admitted the theft to C A must prove the admission

B wishes the Court to believe that, at the time in question, he was elsewhere He must prove it.

Burden of
proving fact
to be proved
to make
evidence
admissible

104 The burden of proving any fact necessary to be proved in order to enable any person to give evidence of any other fact is on the person who wishes to give such evidence

¹ See in the Act as published in Gazette of India, 1872, Pt IV, p 1 There is no illustration (b)

(Chapter VII —Of the Burden of Proof.)

Illustrations

- (a) A wishes to prove a dying declaration by B. A must prove B's death.
- (b) A wishes to prove by secondary evidence the contents of a lost document. A must prove that the document has been lost.

105 When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Indian Penal Code, or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him and the Court shall presume the absence of such circumstances.

Burden of proving that case of accused comes within exceptions

Illustrations

- (a) A accused of murder alleges that by reason of unsoundness of mind he did not know the nature of the act.

The burden of proof is on A.

- (b) A accused of murder alleges that by grave and sudden provocation he was deprived of the power of self control.

The burden of proof is on A.

- (c) Section 325 of the Indian Penal Code provides that whoever except in the case provided for by section 335 voluntarily causes grievous hurt shall be subject to certain punishments.

A is charged with voluntarily causing grievous hurt under section 325.

The burden of proving the circumstances bringing the case under section 335 lies on A.

106 When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

Burden of proving fact especially within knowledge

Illustrations

- (a) When a person does an act with some intention other than that which the character and circumstances of the act suggest the burden of proving that intention is upon him.

- (b) A is charged with travelling on a railway without a ticket. The burden of proving that he had a ticket is on him.

107 When the question is whether a man is alive or dead, and it is shown that he was alive within thirty years, the burden of proving that he is dead is on the person who affirms it.

Burden of proving death of person known to have been alive within thirty years

108 1[Provided that when] the question is whether a man is alive or dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is 2[shifted to] the person who affirms it.

Burden of proving that person is alive who has not been heard of for seven years.

1 Sub* by the Indian Evidence Act Amendment Act (18 of 1872), s 9, for "When"

2 Subs by s 9 *ibid* for "on"

(Chapter VII —Of the Burden of Proof.)

Burden of proof as to relationship in the cases of partners landlord and tenant principal and agent

109 When the question is whether persons are partners, landlord and tenant or principal and agent, and it has been shown that they have been acting as such the burden of proving that they do not stand, or have ceased to stand, to each other in those relationships respectively, is on the person who affirms it

Burden of proof as to ownership

110 When the question is whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner

Proof of good faith in transactions where one party is in relation of active confidence

111 Where there is a question as to the good faith of a transaction between parties, one of whom stands to the other in a position of active confidence the burden of proving the good faith of the transaction is on the party who is in a position of active confidence

Illustrations

(a) The good faith of a sale by a client to an attorney is in question in a suit brought by the client The burden of proving the good faith of the transaction is on the attorney

(b) The good faith of a sale by a son just come of age to a father is in question in a suit brought by the son The burden of proving the good faith of the transaction is on the father

Birth during marriage conclusive proof of legitimacy

112 The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution the mother remaining unmarried shall be conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten

Proof of cession of territory

113 A notification in the 1[Official Gazette] that any portion of British territory has 2[before the commencement of Part III of the Government of India Act 1935] been ceded to any Native State, Prince or Ruler shall be conclusive proof that a valid cession of such territory took place at the date mentioned in such notification³

Court may presume existence of certain facts

114 The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events human conduct and public and private business in their relation to the facts of the particular case

¹ Subs by the A O for Gazette of India

² Ins by the A O Part III of the G of I Act 1935 came into force on the 1st April 1937 Cf s 290 of that Act

³ See for example Gazette of India 1873 Pt I p 2

(Chapter VII —Of the Burden of Proof.)

Illustrations

The Court may presume—

- (a) that a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession
- (b) that an accomplice is unworthy of credit unless he is corroborated in material particulars
- (c) that a bill of exchange accepted or endorsed was accepted or endorsed for good consideration
- (d) that a thing or state of things which has been shown to be in existence within a period shorter than that within which such things or states of things usually cease to exist is still in existence
- (e) that judicial and official acts have been regularly performed
- (f) that the common course of business has been followed in particular cases,
- (g) that evidence which could be and is not produced would if produced be unfavourable to the person who withholds it
- (h) that if a man refuses to answer a question which he is not compelled to answer by law the answer if given would be unfavourable to him
- (i) that when a document creating an obligation is in the hands of the obligor the obligation has been discharged

But the Court shall also have regard to such facts as the following in considering whether such maxims do or do not apply to the particular case before it —

as to *illustration (a)*—a shop keeper has in his till a marked rupee soon after it was stolen and cannot account for its possession specifically but is continually receiving rupees in the course of his business

as to *illustration (b)*—A a person of the highest character is tried for causing a man's death by an act of negligence in arranging certain machinery B a person of equally good character who also took part in the arrangement describes precisely what was done and admits and explains the common carelessness of A and himself

as to *illustration (c)*—a crime is committed by several persons A, B and C, three of the criminals are captured on the spot and kept apart from each other Each gives an account of the crime implicating D and the accounts corroborate each other in such a manner as to render previous concert highly improbable

as to *illustration (d)*—A the drawer of a bill of exchange was a man of business B, the acceptor was a young and ignorant person completely under A's influence

as to *illustration (e)*—it is proved that a river ran in a certain course five years ago but it is known that there have been floods since that time which might change its course

as to *illustration (f)*—a judicial act the regularity of which is in question, was performed under exceptional circumstances

as to *illustration (g)*—the question is whether a letter was received It is shown to have been posted but the usual course of the post was interrupted by disturbances

as to *illustration (h)*—a man refuses to produce a document which would bear on a contract of small importance on which he is sued but which might also injure the feelings and reputation of his family

as to *illustration (i)*—a man refuses to answer a question which he is not compelled by law to answer but the answer to it might cause loss to him in matters unconnected with the matter in relation to which it is asked

as to *illustration (i)*—a bond is in possession of the obligor, but the circumstances of the case are such that he may have stolen it

(Chapter VIII — Estoppel Chapter IX — Of Witnesses)

CHAPTER VIII

ESTOPPEL

Estoppel

115 When one person has by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief neither he nor his representative shall be allowed in any suit or proceeding between himself and such person or his representative to deny the truth of that thing

Illustration

A intentionally and falsely leads B to believe that certain land belongs to A and thereby induces B to buy and pay for it

The land afterwards becomes the property of A and A seeks to set aside the sale on the ground that at the time of the sale he had no title He must not be allowed to prove his want of title

Estoppel of
tenant
and of
licensee of
person in
possession

116 No tenant of immoveable property, or person claiming through such tenant shall during the continuance of the tenancy be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy a title to such immoveable property and no person who came upon any immoveable property by the license of the person in possession thereof shall be permitted to deny that such person had a title to such possession at the time when such license was given

Estoppel of
acceptor
of bill of
exchange
bailor or
licensee

117 No acceptor of a bill of exchange shall be permitted to deny that the drawer had authority to draw such bill or to endorse it nor shall any bailee or licensee be permitted to deny that his bailor or licensor had at the time when the bailment or license commenced authority to make such bailment or grant such license

Explanation (1) — The acceptor of a bill of exchange may deny that the bill was really drawn by the person by whom it purports to have been drawn

Explanation (2) — If a bailee delivers the goods bailed to a person other than the bailor he may prove that such person had a right to them as against the bailor

CHAPTER IX

OF WITNESSES

Who may
testify

118 All persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them or from giving rational answers to those questions by tender years extreme old age disease whether of body or mind or any other cause of the same kind

(Chapter IX.—Of Witnesses)

Explanation—A lunatic is not incompetent to testify, unless he is prevented by his lunacy from understanding the questions put to him and giving rational answers to them

119 A witness who is unable to speak may give his evidence in any other manner in which he can make it intelligible, as by writing or by signs, but such writing must be written and the signs made in open Court Evidence so given shall be deemed to be oral evidence Dumb witnesses

120 In all civil proceedings the parties to the suit and the husband or wife of any party to the suit shall be competent witnesses In criminal proceedings against any person the husband or wife of such person, respectively, shall be a competent witness Parties to civil suit, and their wives or husbands Husband or wife of person under criminal trial

121. No Judge or Magistrate shall except upon the special order of some Court to which he is subordinate be compelled to answer any questions as to his own conduct in Court as such Judge or Magistrate or as to anything which came to his knowledge in Court as such Judge or Magistrate but he may be examined as to other matter which occurred in his presence whilst he was so acting Judges and Magistrate

Illustrations

(a) A on his trial before the Court of Session says that a deposition was improperly taken by B the Magistrate B cannot be compelled to answer questions as to this except upon the special order of a superior Court

(b) A is accused before the Court of Session of having given false evidence before B, a Magistrate B cannot be asked what A said except upon the special order of the superior Court

(c) A is accused before the Court of Session of attempting to murder a police officer whilst on his trial before B a Sessions Judge B may be examined as to what occurred

122 No person who is or has been married shall be compelled to disclose any communication made to him during marriage by any person to whom he is or has been married nor shall he be permitted to disclose any such communication, unless the person who made it, or his representative in interest, consents, except in suits between married persons, or proceedings in which one married person is prosecuted for any crime committed against the other Communications during marriage

123 No one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of State, except with the permission of the officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit Evidence as to affairs of State

124 No public officer shall be compelled to disclose communications of a confidential nature made to him in official confidence when he considers that the public interests would suffer by the disclosure Official communications

(Chapter IX —Of Witnesses)

Information
as to
commission
of offences

¹[125 No Magistrate or Police officer shall be compelled to say whence he got any information as to the commission of any offence, and no Revenue officer shall be compelled to say whence he got any information as to the commission of any offence against the public revenue]

Explanation —“Revenue officer” in this section means any officer employed in or about the business of any branch of the public revenue.]

Profes-
sional com-
munications.

126 No barrister, attorney, pleader or vakil shall at any time be permitted, unless with his client's express consent, to disclose any communication made to him in the course and for the purpose of his employment as such barrister, pleader, attorney or vakil, by or on behalf of his client, or to state the contents or condition of any document with which he has become acquainted in the course and for the purpose of his professional employment, or to disclose any advice given by him to his client in the course and for the purpose of such employment

Provided that nothing in this section shall protect from disclosure—

(1) any such communication made in furtherance of any ²[illegal] purpose

(2) any fact observed by any barrister, pleader, attorney or vakil in the course of his employment as such showing that any crime or fraud has been committed since the commencement of his employment

It is immaterial whether the attention of such barrister, ³[pleader], attorney or vakil was or was not directed to such fact by or on behalf of his client

Explanation —The obligation stated in this section continues after the employment has ceased

Illustrations

(a) A a client says to B an attorney— I have committed forgery and I wish you to defend me

As the defence of a man known to be guilty is not a criminal purpose this communication is protected from disclosure

(b) A a client says to B an attorney— I wish to obtain possession of property by the use of a forged deed on which I request you to sue

The communication being made in furtherance of a criminal purpose is not protected from disclosure

(c) A being charged with embezzlement retains B an attorney to defend him. In the course of the proceedings B observes that an entry has been made in A's account book charging A with the sum said to have been embezzled which entry was not in the book at the commencement of his employment

This being a fact observed by B in the course of his employment, showing that a fraud has been committed since the commencement of the proceedings it is not protected from disclosure

¹ Subs for original s 125 by the Indian Evidence Act (1872) Amendment Act 1887 (3 of 1887)

² Subs by s 10 of the Indian Evidence Act Amendment Act (18 of 1872) for ‘criminal’

³ Ins by s 10, *ibid*

(Chapter IX —Of Witnesses)

127 The provisions of section 126 shall apply to interpreters, and the clerks or servants of barristers, pleaders, attorneys and vakils

Section 126 to apply to interpreters, etc

128 If any party to a suit gives evidence therein at his own instance or otherwise, he shall not be deemed to have consented thereby to such disclosure as is mentioned in section 126 and, if any party to a suit or proceeding calls any such barrister, ¹[pleader] attorney or vakil as a witness, he shall be deemed to have consented to such disclosure only if he questions such barrister, attorney or vakil on matters which, but for such question, he would not be at liberty to disclose

Privilege not waived by volunteering evidence

129 No one shall be compelled to disclose to the Court any confidential communication which has taken place between him and his legal professional adviser unless he offers himself as a witness, in which case he may be compelled to disclose any such communications as may appear to the Court necessary to be known in order to explain any evidence which he has given but no others

Confidential communications with legal advisers

130 No witness who is not a party to a suit shall be compelled to produce his title deeds to any property or any document in virtue of which he holds any property as pledgee or mortgagee or any document the production of which might tend to criminate him unless he has agreed in writing to produce them with the person seeking the production of such deeds or some person through whom he claims

Production of title deeds of witness not a party

131 No one shall be compelled to produce documents in his possession, which any other person would be entitled to refuse to produce if they were in his possession unless such last mentioned person consents to their production

Production of documents which another person, having possession could refuse to produce

132 A witness shall not be excused from answering any question as to any matter relevant to the matter in issue in any suit or in any civil or criminal proceeding upon the ground that the answer to such question will criminate, or may tend directly or indirectly to criminate, such witness or that it will expose, or tend directly or indirectly to expose, such witness to a penalty or forfeiture of any kind

Witness not excused from answering on ground that answer will criminate

Provided that no such answer, which a witness shall be compelled to give, shall subject him to any arrest or prosecution or be proved against him in any criminal proceeding except a prosecution for giving false evidence by such answer

proviso

*(Chapter IX —Of Witnesses. Chapter X —Of the Examination
of Witnesses)*

- Accomplice** **133** An accomplice shall be a competent witness against an accused person, and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice
- Number of witnesses** **134** No particular number of witnesses shall in any case be required for the proof of any fact

CHAPTER X

OF THE EXAMINATION OF WITNESSES

- Order of production and examination of witnesses** **135** The order in which witnesses are produced and examined shall be regulated by the law and practice for the time being relating to civil and criminal procedure respectively, and, in the absence of any such law by the discretion of the Court
- Judge to decide as to admissibility of evidence** **136** When either party proposes to give evidence of any fact, the Judge may ask the party proposing to give the evidence in what manner the alleged fact if proved, would be relevant, and the Judge shall admit the evidence if he thinks that the fact, if proved, would be relevant and not otherwise

If the fact proposed to be proved is one of which evidence is admissible only upon proof of some other fact, such last-mentioned fact must be proved before evidence is given of the fact first mentioned, unless the party undertakes to give proof of such fact and the Court is satisfied with such undertaking

If the relevancy of one alleged fact depends upon another alleged fact being first proved the Judge may, in his discretion, either permit evidence of the first fact to be given before the second fact is proved, or require evidence to be given of the second fact before evidence is given of the first fact

Illustrations

(a) It is proposed to prove a statement about a relevant fact by a person alleged to be dead which statement is relevant under section 32

The fact that the person is dead must be proved by the person proposing to prove the statement before evidence is given of the statement

(b) It is proposed to prove by a copy, the contents of a document said to be lost

The fact that the original is lost must be proved by the person proposing to produce the copy before the copy is produced

(c) A is accused of receiving stolen property knowing it to have been stolen

It is proposed to prove that he denied the possession of the property

The relevancy of the denial depends on the identity of the property The Court may, in its discretion, either require the property to be identified before the denial of the possession is proved, or permit the denial of possession to be proved before the property is identified

(Chapter A —Of the Examination of Witnesses)

(d) It is proposed to prove a fact (A) which is said to have been the cause or effect of a fact in issue. There are several intermediate facts (B C and D) which must be shown to exist before the fact (A) can be regarded as the cause or effect of the fact in issue. The Court may either permit A to be proved before B C and D is proved or may require proof of B C and D before permitting proof of A.

137 The examination of a witness by the party who calls him shall be called his examination in chief

The examination of a witness by the adverse party shall be called his cross examination

The examination of a witness subsequent to the cross examination by the party who called him shall be called his re examination

138 Witnesses shall be first examined in chief then (if the adverse party so desires) cross examined then (if the party calling him so desires) re examined

The examination and cross examination must relate to relevant facts but the cross examination need not be confined to the facts to which the witness testified on his examination in-chief

The re examination shall be directed to the explanation of matters referred to in cross examination and if new matter is by permission of the Court introduced in re examination the adverse party may further cross examine upon that matter

139 A person summoned to produce a document does not become a witness by the mere fact that he produces it and cannot be cross examined unless and until he is called as a witness

140 Witnesses to character may be cross examined and re examined

141 Any question suggesting the answer which the person putting it wishes or expects to receive is called a leading question

142 Leading questions must not if objected to by the adverse party be asked in an examination in chief or in a re examination, except with the permission of the Court

The Court shall permit leading questions as to matters which are in fact undisputed, or which have in its opinion, been already sufficiently proved

143 Leading questions may be asked in cross examination

144 Any witness may be asked whilst under examination, whether any contract, grant or other disposition of property as to which he is giving evidence was not contained in a document and if he says that

(Chapter V —Of the Examination of Witnesses)

it was, or if he is about to make any statement as to the contents of any document, which, in the opinion of the Court, ought to be produced, the adverse party may object to such evidence being given until such document is produced, or until facts have been proved which entitle the party who called the witness to give secondary evidence of it

Explanation —A witness may give oral evidence of statements made by other persons about the contents of documents if such statements are in themselves relevant facts

Illustration

The question is whether A assaulted B

C deposes that he heard A say to D— B wrote a letter accusing me of theft, and I will be revenged on him. This statement is relevant as showing A's motive for the assault and evidence may be given of it though no other evidence is given about the letter

Cross examination as to previous statements in writing

1145 A witness may be cross examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved, but if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him

Questions lawful in cross examination

1146 When a witness is cross examined, he may, in addition to the questions hereinbefore referred to be asked any questions which tend—

- (1) to test his veracity,
- (2) to discover who he is and what is his position in life, or
- (3) to shake his credit, by injuring his character, although the answer to such questions might tend directly or indirectly to criminate him or might expose or tend directly or indirectly to expose him to a penalty or forfeiture

When witness to be compelled to answer

1147 If any such question relates to a matter relevant to the suit or proceeding, the provisions of section 132 shall apply thereto

Court to decide when question shall be asked and when witness compelled to answer

1148 If any such question relates to a matter not relevant to the suit or proceeding, except in so far as it affects the credit of the witness by injuring his character, the Court shall decide whether or not the witness shall be compelled to answer it, and may if it thinks fit, warn the witness that he is not obliged to answer it. In exercising its discretion, the Court shall have regard to the following considerations —

- (1) such questions are proper if they are of such a nature that the truth of the imputation conveyed by them would

¹ As to the application of s 145 to police diaries see the Code of Criminal Procedure 1898 (Act 5 of 1898) s 172

(Chapter X —Of the Examination of Witnesses.)

- seriously affect the opinion of the Court as to the credibility of the witness on the matter to which he testifies ;
- (2) such questions are improper if the imputation which they convey relates to matters so remote in time, or of such a character, that the truth of the imputation would not affect, or would affect in a slight degree, the opinion of the Court as to the credibility of the witness on the matter to which he testifies
 - (3) such questions are improper if there is a great disproportion between the importance of the imputation made against the witness's character and the importance of his evidence
 - (4) the Court may, if it sees fit, draw, from the witness's refusal to answer, the inference that the answer if given would be unfavourable

149 No such question as is referred to in section 148 ought to be asked unless the person asking it has reasonable grounds for thinking that the imputation which it conveys is well founded

Question not to be asked without reasonable grounds

Illustrations

(a) A barrister is instructed by an attorney or vakil that an important witness is a dákait. This is a reasonable ground for asking the witness whether he is a dákait.

(b) A pleader is informed by a person in Court that an important witness is a dákait. The informant, on being questioned by the pleader, gives satisfactory reasons for his statement. This is a reasonable ground for asking the witness whether he is a dákait.

(c) A witness of whom nothing whatever is known is asked at random whether he is a dákait. There are here no reasonable grounds for the question.

(d) A witness of whom nothing whatever is known being questioned as to his mode of life and means of living gives unsatisfactory answers. This may be a reasonable ground for asking him if he is a dákait.

150 If the Court is of opinion that any such question was asked without reasonable grounds, it may, if it was asked by any barrister, pleader, vakil or attorney, report the circumstances of the case to the High Court or other authority to which such barrister, pleader, vakil or attorney is subject in the exercise of his profession.

Procedure of Court in case of question being asked without reasonable grounds

151 The Court may forbid any questions or inquiries which it regards as indecent or scandalous, although such questions or inquiries may have some bearing on the questions before the Court, unless they relate to facts in issue or to matters necessary to be known in order to determine whether or not the facts in issue existed.

Indecent and scandalous questions

(Chapter X —Of the Examination of Witnesses.)

Questions
intended to
insult or
annoy

152 The Court shall forbid any question which appears to it to be intended to insult or annoy, or which, though proper in itself, appears to the Court needlessly offensive in form

Exclusion
of evidence
to contradict
answers to
questions
testing
veracity

153 When a witness has been asked and has answered any question which is relevant to the inquiry only in so far as it tends to shake his credit by injuring his character, no evidence shall be given to contradict him, but, if he answers falsely, he may afterwards be charged with giving false evidence

Exception 1 —If a witness is asked whether he has been previously convicted of any crime and denies it, evidence may be given of his previous conviction

Exception 2 —If a witness is asked any question tending to impeach his impartiality and answers it by denying the facts suggested, he may be contradicted

Illustrations

(a) A claim against an underwriter is resisted on the ground of fraud

The claimant is asked whether in a former transaction he had not made a fraudulent claim. He denies it

Evidence is offered to show that he did make such a claim

The evidence is inadmissible

(b) A witness is asked whether he was not dismissed from a situation for dishonesty

He denies it

Evidence is offered to show that he was dismissed for dishonesty

The evidence is not admissible

(c) A affirms that on a certain day he saw B at Lahore

A is asked whether he himself was not on that day at Calcutta. He denies it

Evidence is offered to show that A was on that day at Calcutta

The evidence is admissible, not as contradicting A on a fact which affects his credit but as contradicting the alleged fact that B was seen on the day in question in Lahore

In each of these cases the witness might, if his denial was false be charged with giving false evidence

(d) A is asked whether his family has not had a bloodfeud with the family of B against whom he gives evidence

He denies it. He may be contradicted on the ground that the question tends to impeach his impartiality

Question by
party to his
own witness

154 The Court may, in its discretion, permit the person who calls a witness to put any questions to him which might be put in cross examination by the adverse party

(Chapter X.—Of the Examination of Witnesses)

155 The credit of a witness may be impeached in the following ways Impeaching credit of witness
by the adverse party, or, with the consent of the Court, by the party who calls him.—

- (1) by the evidence of persons who testify that they, from their knowledge of the witness, believe him to be unworthy of credit,
- (2) by proof that the witness has been bribed, or has [accepted]¹ the offer of a bribe, or has received any other corrupt inducement to give his evidence,
- (3) by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted,
- (4) when a man is prosecuted for rape or an attempt to ravish, it may be shown that the prosecutrix was of generally immoral character

Explanation—A witness declaring another witness to be unworthy of credit may not, upon his examination in chief, give reasons for his belief, but he may be asked his reasons in cross examination, and the answers which he gives cannot be contradicted, though if they are false, he may afterwards be charged with giving false evidence

Illustrations

(a) A sues B for the price of goods sold and delivered to B. C says that A delivered the goods to B.

Evidence is offered to show that on a previous occasion he said that he had not delivered the goods to B.

The evidence is admissible.

(b) A is indicted for the murder of B.

C says that B when dying declared that A had given B the wound of which he died.

Evidence is offered to show that on a previous occasion C said that the wound was not given by A or in his presence.

The evidence is admissible.

156 When a witness whom it is intended to corroborate gives evidence of any relevant fact, he may be questioned as to any other circumstances which he observed at or near to the time or place at which such relevant fact occurred, if the Court is of opinion that such circumstances, if proved, would corroborate the testimony of the witness as to the relevant fact which he testifies Questions tending to corroborate evidence of relevant fact admissible

Illustrations

A an accomplice gives an account of a robbery in which he took part. He describes various incidents unconnected with the robbery which occurred on his way to and from the place where it was committed.

¹ Subs. by s. 11 of the Indian Evidence Act Amendment Act (18 of 1872), for 'had'

(Chapter X —Of the Examination of Witnesses.)

Independent evidence of these facts may be given in order to corroborate his evidence as to the robbery itself

Former statements of witness may be proved to corroborate later testimony as to same fact

157 In order to corroborate the testimony of a witness, any former statement made by such witness relating to the same fact at or about the time when the fact took place, or before any authority legally competent to investigate the fact, may be proved

What matters may be proved in connection with proved statement relevant under section 32, or 33

158 Whenever any statement, relevant under section 32 or 33, is proved, all matters may be proved either in order to contradict or to corroborate it, or in order to impeach or confirm the credit of the person by whom it was made, which might have been proved if that person had been called as a witness and had denied upon cross examination the truth of the matter suggested

Refreshing memory

159 A witness may, while under examination, refresh his memory by referring to any writing made by himself at the time of the transaction concerning which he is questioned, or so soon afterwards that the Court considers it likely that the transaction was at that time fresh in his memory

The witness may also refer to any such writing made by any other person, and read by the witness within the time aforesaid, if when he read it he knew it to be correct

When witness may use copy of document to refresh memory

Whenever a witness may refresh his memory by reference to any document, he may, with the permission of the Court, refer to a copy of such document

Provided the Court be satisfied that there is sufficient reason for the non production of the original

An expert may refresh his memory by reference to professional treatises

Testimony to facts stated in document mentioned in section 159

160 A witness may also testify to facts mentioned in any such document as is mentioned in section 159, although he has no specific recollection of the facts themselves, if he is sure that the facts were correctly recorded in the document

Illustration

A book keeper may testify to facts recorded by him in books regularly kept in the course of business if he knows that the books were correctly kept although he has forgotten the particular transactions entered.

(Chapter A —Of the Examination of Witnesses.)

161 Any writing referred to under the provisions of the two last preceding sections must be produced and shown to the adverse party if he requires it such party may, if he pleases, cross-examine the witness thereupon.

Right of
adverse party
as to writing
used to
refresh
memory

162 A witness summoned to produce a document shall, if it is in his possession or power, bring it to Court, notwithstanding any objection which there may be to its production or to its admissibility The validity of any such objection shall be decided on by the Court

Production
of docu-
ments

The Court if it sees fit, may inspect the document, unless it refers to matters of State, or take other evidence to enable it to determine on its admissibility.

If for such a purpose it is necessary to cause any document to be translated, the Court may, if it thinks fit, direct the translator to keep the contents secret, unless the document is to be given in evidence and, if the interpreter disobeys such direction, he shall be held to have committed an offence under section 166 of the Indian Penal Code.

Translation
of docu-
ments

163 When a party calls for a document which he has given other party notice to produce, and such document is produced and inspected by the party calling for its production, he is bound to give as evidence if the party producing it requires him to do so.

the giving, as
evidence, of
document
called for

164 When a party refuses to produce a document which he has had notice to produce, he cannot afterwards use the document as evidence without the consent of the other party or the order of the Court

and
it is not
to be used
as evidence

Illustration.

A sues B on an agreement and gives B notice to produce it for the document and B refuses to produce it A gives B notice to produce the document itself to contradict B or in order to show that the agreement is not as B cannot do so

the giving, as
evidence, of
document
called for

165 The Judge may, in order to discover or to establish any relevant facts, ask any question he pleases, in any form, of any witness, or of the parties about any fact relevant to the case and may order the production of any document or thing in his possession or power the parties nor their agents shall be entitled to make any such question or order, nor, without the leave of the Court, examine any witness upon any answer given in reply to any such question

and
it is not
to be used
as evidence

1 As to the application of s 161 to police diaries, see the Evidence Act, 1872 Procedure, 1893 (Act 5 of 1893) s 172

(Chapter X —Of the Examination of Witnesses.)

Independent evidence of these facts may be given in order to corroborate his evidence as to the robbery itself

Former statements of witness may be proved to corroborate later testimony as to same fact

157 In order to corroborate the testimony of a witness, any former statement made by such witness relating to the same fact at or about the time when the fact took place, or before any authority legally competent to investigate the fact, may be proved

What matters may be proved in connection with proved statement relevant under section 32, or 33

158 Whenever any statement, relevant under section 32 or 33, is proved, all matters may be proved either in order to contradict or to corroborate it, or in order to impeach or confirm the credit of the person by whom it was made, which might have been proved if that person had been called as a witness and had denied upon cross-examination the truth of the matter suggested

Refreshing memory

159 A witness may, while under examination, refresh his memory by referring to any writing made by himself at the time of the transaction concerning which he is questioned, or so soon afterwards that the Court considers it likely that the transaction was at that time fresh in his memory

The witness may also refer to any such writing made by any other person, and read by the witness within the time aforesaid if when he read it he knew it to be correct

When witness may use copy of document to refresh memory

Whenever a witness may refresh his memory by reference to any document, he may, with the permission of the Court, refer to a copy of such document

Provided the Court be satisfied that there is sufficient reason for the non production of the original

An expert may refresh his memory by reference to professional treatises

Testimony to facts stated in document mentioned in section 159

160 A witness may also testify to facts mentioned in any such document as is mentioned in section 159, although he has no specific recollection of the facts themselves, if he is sure that the facts were correctly recorded in the document

Illustration

A book keeper may testify to facts recorded by him in books regularly kept in the course of business if he knows that the books were correctly kept although he has forgotten the particular transactions entered

(Chapter X —Of the Examination of Witnesses)

161 Any writing referred to under the provisions of the two last preceding sections must be produced and shown to the adverse party if he requires it such party may, if he pleases, cross examine the witness thereupon

Right of adverse party as to writing used to refresh memory

162 A witness summoned to produce a document shall, if it is in his possession or power, bring it to Court notwithstanding any objection which there may be to its production or to its admissibility The validity of any such objection shall be decided on by the Court

Production of documents

The Court if it sees fit, may inspect the document, unless it refers to matters of State, or take other evidence to enable it to determine on its admissibility

If for such a purpose it is necessary to cause any document to be translated the Court may, if it thinks fit, direct the translator to keep the contents secret unless the document is to be given in evidence and, if the interpreter disobeys such direction, he shall be held to have committed an offence under section 166 of the Indian Penal Code

Translation of documents

163 When a party calls for a document which he has given the other party notice to produce and such document is produced and inspected by the party calling for its production he is bound to give it as evidence if the party producing it requires him to do so

Giving, as evidence of document called for and produced on notice

164 When a party refuses to produce a document which he has had notice to produce he cannot afterwards use the document as evidence without the consent of the other party or the order of the Court

Using as evidence of document production of which was refused on notice

Illustration
A sues B on an agreement and gives B notice to produce it At the trial A calls for the document and B refuses to produce it A gives secondary evidence of its contents B seeks to produce the document itself to contradict the secondary evidence given by A or in order to show that the agreement is not stamped He cannot do so

165 The Judge may, in order to discover or to obtain proper proof of relevant facts ask any question he pleases, in any form, at any time, of any witness, or of the parties about any fact relevant or irrelevant, and may order the production of any document or thing and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor without the leave of the Court, to cross examine any witness upon any answer given in reply to any such question

Judge's power to put questions or order production

¹ As to the application of s 161 to police diaries see the Code of Criminal Procedure 1898 (Act 5 of 1898) s 172

*(Chapter X—Of the Examination of Witnesses Chapter XI—Of
Improper Admission and Rejection of Evidence Schedule)*

Provided that the judgment must be based upon facts declared by this Act to be relevant and duly proved

Provided also that this section shall not authorize any Judge to compel any witness to answer any question or to produce any document which such witness would be entitled to refuse to answer or produce under sections 121 to 131 both inclusive if the question were asked or the document were called for by the adverse party nor shall the Judge ask any question which it would be improper for any other person to ask under section 148 or 149 nor shall he dispense with primary evidence of any document except in the cases hereinbefore excepted

Power of
jury or
assessors to
put
questions

166 In cases tried by jury or with assessors the jury or assessors may put any questions to the witnesses through or by leave of the Judge, which the Judge himself might put and which he considers proper

CHAPTER VI

OF IMPROPER ADMISSION AND REJECTION OF EVIDENCE

No new
trial for
improper
admission or
rejection of
evidence

167 The improper admission or rejection of evidence shall not be ground of itself for a new trial or reversal of any decision in any case, if it shall appear to the Court before which such objection is raised that, independently of the evidence objected to and admitted there was sufficient evidence to justify the decision or that if the rejected evidence had been received it ought not to have varied the decision

THE SCHEDULE —[Enactments Repealed] Rep by the Repealing Act 1938 (I of 1938) s 2 and Sch

[THE SPECIAL MARRIAGE ACT, 1872]

CONTENTS

PREAMBLE

SECTIONS.

1. Local extent.
- 2 Conditions upon which marriages under Act may be celebrated.
3. Appointment of Marriage Registrars
4. One of the parties to intended marriage to give notice to Registrar.
- 5 Notice to be filed and copy entered in the Marriage Notice Book.
- 6 Objection to marriage
7. Procedure on receipt of objection
Objector may file suit
- 8 Certificate of filing of suit to be lodged with Registrar
- 9 Court may fine when objection not reasonable
- 10 Declaration by parties and witnesses
11. Marriage how to be solemnized.
- 12 Place where marriage may be solemnized.
- 13 Certificate of marriage.
- 13A Transmission of certified copies of entries in Marriage Certificate Book to the Registrar General of Births, Deaths and Marriages.
14. Fees.
- 15 Penalty on married person marrying again under Act.
- 16 Punishment of bigamy.
17. Indian Divorce Act to apply.
18. Law to apply to issue of marriages under Act.
19. Saving of marriages solemnized otherwise than under Act
20. [*Repealed.*]
21. Penalty for signing declarations or certificates containing false statements.

¹ Short title given by the Indian Short Titles Act, 1897 (14 of 1897)

SECTIONS

- 22 Effect of certain marriages on coparcenary
 - 23 Rights of succession in certain cases of marriage under Act
 - 24 Succession to the property of parties married under Act
 - 25 Person marrying under Act not to have right of adoption
 - 26 Adoption by father of person marrying under Act
-

FIRST SCHEDULE —NOTICE OF MARRIAGE

SECOND SCHEDULE —DECLARATIONS TO BE MADE BY THE BRIDE
GROOM AND BRIDE

THIRD SCHEDULE —REGISTRAR'S CERTIFICATE

FOURTH SCHEDULE —[Repealed]

ACT No III OF 1872¹

[22nd March 1872]

An Act to provide a form of Marriage in certain cases

WHEREAS it is expedient to provide a form of marriage for persons who do not profess the Christian, Jewish, Hindu, Muhammadan, Pársi, Buddhist, Sikh or Jaina religion, ²[and for persons who profess the Hindu, Buddhist, Sikh or Jaina religion] and to legalize certain marriages the validity of which is doubtful, It is hereby enacted as follows —

Preamble

1. This Act extends³ to the whole of British India * * *

Local extent.

2. Marriages may be celebrated under this Act between persons neither of whom professes the Christian or the Jewish, or the Hindu or the Muhammadan, or the Pársi or the Buddhist or the Sikh or the Jaina religion, ⁵[or between persons each of whom professes one or other of the following religions that is to say, the Hindu, Buddhist, Sikh or Jaina religion] upon the following conditions —

Conditions upon which marriages under Act may be celebrated

- (1) neither party must at the time of the marriage, have a husband or wife living
- (2) the man must have completed his age of eighteen years, and the woman her age of fourteen years according to the Gregorian calendar
- (3) each party must, if he or she has not completed the age of twenty one years, have obtained the consent of his or her father or guardian to the marriage

¹ There is no Statement of Objects and Reasons, the Bill as introduced was published in the Gazette of India 1868 p. 1403, for the Report of the Select Committee dated 21st December 1871 see *ibid*, 1871 Pt. V p. 519 for discussions in Council, see *ibid*, 1868 Supplement pp. 890 and 1197, *ibid*, 1871, Extra Supplement pp. 16 and 42 *ibid*, 1872 Supplement pp. 2, 57, 193 and 261

² Ins. by s. 2 of the Special Marriage (Amendment) Act, 1923 (30 of 1923)

³ This Act has been declared in force in the Santhál Parganas by the Santhál Parganas Settlement Regulation (3 of 1872) s. 3 in British Baluchistan by the British Baluchistan Laws Regulation 1913 (2 of 1913) s. 3 in the Khondmals District by the Khondmals Laws Regulation 1936 (4 of 1936) s. 3 and Sch., and in the Angul District by the Angul Laws Regulation 1936 (5 of 1936) s. 3 and Sch.

It has been declared by notification under s. 3 (a) of the Scheduled Districts Act 1874 (14 of 1874) to be in force in the following Scheduled Districts namely —

the Districts of Hazáribagh, Lohárdaga and Manbhum and Pargana Dhálbhum and the Kolhár in the District of Singbhum—see Gazette of India 1881, Pt. I p. 504. The District of Lohárdaga included at this time the present District of Palamau which was separated in 1894. The District of Lohardaga is now called the Ranchi District.

the North Western Provinces Tará—*ibid* 1876 Pt. I, p. 506

⁴ The words "and shall come into force on the passing thereof" were rep. by s. 1 and Sch. Pt. I of the Repealing Act 1874 (16 of 1874)

⁵ Ins. by s. 3 of the Special Marriage (Amendment) Act 1923 (30 of 1923)

- (4) the parties must not be related to each other in any degree of consanguinity or affinity which would, according to any law to which either of them is subject, render a marriage between them illegal

1st Proviso —No such law or custom, other than one relating to consanguinity or affinity shall prevent them from marrying

2nd Proviso —No law or custom as to consanguinity shall prevent them from marrying unless a relationship can be traced between the parties through some common ancestor, who stands to each of them in a nearer relationship than that of great great grand father or great great grand mother or unless one of the parties is the lineal ancestor, or the brother or sister of some lineal ancestor of the other

Appointment
of Marriage
Registrars

3 The ¹[Provincial Government] may appoint one or more Registrars under this Act either by name or as holding any office for the time being for any portion of the territory subject to its administration The officer so appointed shall be called Registrar of Marriages under Act III of 1872 and is hereinafter referred to as the Registrar The portion of territory for which any such officer is appointed shall be deemed his district

One
parties to in
tended mar-
riage to give
notice to
Registrar

4 When a marriage is intended to be solemnized under this Act, one of the parties must give notice in writing to the Registrar before whom it is to be solemnized

The Registrar to whom such notice is given must be the Registrar of a district within which one at least of the parties to the marriage has resided for fourteen days before such notice is given

Such notice may be in the form given in the first schedule to this Act

Notice to be
filed and
copy entered
in the
Marriage
Notice Book

5 The Registrar shall file all such notices and keep them with the records of his office, and shall also forthwith enter a true copy of every such notice in a book to be for that purpose furnished to him by the ²[Provincial Government], to be called the Marriage Notice Book under Act III of 1872, and such book shall be open at all reasonable times, without fee, to all persons desirous of inspecting the same

Objection to
marriage

6 Fourteen days after notice of an intended marriage has been given under section 4, such marriage may be solemnized, unless it has been previously objected to in the manner hereinafter mentioned

¹ Subs by the A O for L G

² Subs by the A O for Govt

Any person may object to any such marriage on the ground that it would contravene some one or more of the conditions prescribed in clauses (1) (2) (3) or (4) of section 2

The nature of the objection made shall be recorded in writing by the Registrar in the register and shall if necessary be read over and explained to the person making the objection and shall be signed by him or on his behalf

7 On receipt of such notice of objection the Registrar shall not proceed to solemnize the marriage until the lapse of fourteen days from the receipt of such objection if there be a Court of competent jurisdiction open at the time or if there be no such Court open at the time until the lapse of fourteen days from the opening of such Court

The person objecting to the intended marriage may file a suit in any Civil Court having local jurisdiction (other than a Court of Small Causes) for a declaratory decree declaring that such marriage would contravene some one or more of the conditions prescribed in clauses (1) (2) (3) or (4) of section 2

8 The officer before whom such suit is filed shall thereupon give the person presenting it a certificate to the effect that such suit has been filed. If such certificate be lodged with the Registrar within fourteen days from the receipt of notice of objection if there be a Court of competent jurisdiction open at the time or if there be no such Court open at the time within fourteen days of the opening of such Court the marriage shall not be solemnized till the decision of such Court has been given and the period allowed by law for appeals from such decision has elapsed or if there be an appeal from such decision, till the decision of the Appellate Court has been given

If such certificate be not lodged in the manner and within the period prescribed in the last preceding paragraph or if the decision of the Court be that such marriage would not contravene any one or more of the conditions prescribed in clauses (1) (2) (3) or (4) of section 2 such marriage may be solemnized

If the decision of such Court be that the marriage in question would contravene any one or more of the conditions prescribed in clauses (1) (2), (3) or (4) of section 2 the marriage shall not be solemnized

9 Any Court in which any such suit is referred to in section 7 is filed may if it shall appear to it that the objection was not reasonable and *bona fide* inflict a fine not exceeding one thousand rupees on the person objecting and award it or any part of it to the parties to the intended marriage

Declaration
by parties
and wit-
nesses

10. Before the marriage is solemnized, the parties and three witnesses shall, in the presence of the Registrar, sign a declaration in the form contained in the second schedule to this Act. If either party has not completed the age of twenty-one years, the declaration shall also be signed by his or her father or guardian, except in the case of a widow, and, in every case, it shall be countersigned by the Registrar.

Marriage
how to be
solemnized

11. The marriage shall be solemnized in the presence of the Registrar and of the three witnesses who signed the declaration. It may be solemnized in any form, provided that each party says to the other, in the presence and hearing of the Registrar and witnesses, "I [A], take thee, [B], to be my lawful wife (or husband) "

Place where
marriage
may be
solemnized

12. The marriage may be celebrated either at the office of the Registrar or at such other place, within reasonable distance of the office of the Registrar, as the parties desire. Provided that the ¹[Provincial Government] may prescribe the conditions under which such marriages may be solemnized at places other than the Registrar's office, and the additional fees to be paid thereupon ²

Certificate
of marriage

13. When the marriage has been solemnized the Registrar shall enter a certificate thereof in a book to be kept by him for that purpose and to be called the "Marriage Certificate Book under Act III of 1872" in the form given in the third schedule to this Act, and such certificate shall be signed by the parties to the marriage and the three witnesses

Trans-
mission of
certified
copies of
entries in
marriage
certificate
book to the
Registrar
General of
Births,
Deaths and
Marriages

³[13A The Registrar shall send to the Registrar General of Births, Deaths and Marriages for the territories within which his district is situate, at such interval as the ⁴[Provincial Government] from time to time directs, ⁵a true copy certified by him, in such form as the ⁴[Provincial Government] from time to time prescribes, of all entries made by him in the said marriage certificate book since the last of such intervals ⁶]

¹ Subs by the A O for L G

² For rules framed under this section, see the different Local Rules and Orders

³ Ins by s 29 of the Births, Deaths and Marriages Registration Act, 1886 (6 of 1886)

⁴ Subs by the A O for L G which had been subs for G G in C by s 2 and Schedule I of the Devolution Act, 1920 (38 of 1920)

⁵ For orders issued under this section, see Gazette of India, 1889, Supplement, p 921.

⁶ As to duty of the Registrar General to make and keep indexes of the certified copies sent to his office under this section see the Births, Deaths and Marriages Registration Act, 1886 (6 of 1886) s 7

14. The ¹[Provincial Government] shall prescribe the fees to be Fees, paid to the Registrar for the duties to be discharged by him under this Act.²

The Registrar may, if he think fit, demand payment of any such fee before the solemnization of the marriage or performance of any other duty in respect of which it is payable

The said Marriage-Certificate Book shall at all reasonable times be open for inspection, and shall be admissible as evidence of the truth of the statements therein contained. Certified extracts therefrom shall on application be given by the Registrar on the payment to him by the applicant of a fee to be fixed by the ¹[Provincial Government] for each such extract.

15. Every person who, being at the time married, procures a ^{Penalty on} marriage of himself to be solemnized under this Act, shall be deemed ^{married} to have committed an offence under section 494 or section 495 of the ^{person} Indian Penal Code, as the case may be, and the marriage so solemn- ^{marrying,} ized is void. ^{again under} ^{Act.}

16. Every person married under this Act who, during the lifetime ^{Punishment} of his or her wife or husband, contracts any other marriage, shall be ^{of bigamy} subject to the penalties provided in sections 494 and 495 of the Indian ^{360.} Penal Code for the offence of marrying again during the lifetime of a husband or wife, whatever may be the religion which he or she professed at the time of such second marriage.

17. The Indian Divorce Act shall apply to all marriages contracted ^{Indian} under this Act, and any such marriage may be declared null or dis- ^{Divorce Act} solved in the manner therein provided, and for the causes therein men- ^{to apply} tioned, or on the ground that it contravenes some one or more of the conditions prescribed in clauses (1), (2), (3) or (4) of section 2 of this Act.

18. The issue of marriages solemnized under this Act shall, if they ^{Law to} marry under this Act, be deemed to be subject to the law to ^{apply to} which ^{issue of} their fathers were subject as to the prohibition of marriages by reason ^{marriages} of consanguinity and affinity, and the provisos to section 2 of this Act ^{under Act.} shall apply to them.

¹ Subs. by the A. O. for 'the L. G.'"

² For scales of fees to be paid to Registrars of Marriages prescribed by different Provincial Governments see the Local Rules and Orders

Saving of marriages solemnized otherwise than under Act

19 Nothing in this Act contained shall affect the validity of any marriage not solemnized under its provisions, nor shall this Act be deemed directly or indirectly to affect the validity of any mode of contracting marriage, but, if the validity of any such mode shall hereafter come into question before any Court, such question shall be decided as if this Act had not been passed

20 [Registry of marriages contracted before passing of Act] Rep. by the Repealing Act 1876 (XII of 1876)

Penalty for signing declarations or certificates containing false statements

21 Every person making, signing or attesting any declaration or certificate prescribed by this Act, containing a statement which is false and which he either knows or believes to be false or does not believe to be true, shall be deemed guilty of the offence described in section 199 of the Indian Penal Code

Effect of certain marriages on coparcenary

1[22 The marriage under this Act of any member of an undivided family who professes the Hindu, Buddhist, Sikh or Jaina religion shall be deemed to effect his severance from such family

Rights of succession in certain cases of marriage under Act

23 A person professing the Hindu Buddhist Sikh or Jaina religion who marries under this Act shall have the same rights and be subject to the same disabilities in regard to any right of succession to any property as a person to whom the Caste Disabilities Removal Act, 1850, applies

Provided that nothing in this section shall confer on any person any right to any religious office or service, or to the management of any religious or charitable trust

Succession to the property of parties married under Act

24 Succession to the property of any person professing the Hindu, Buddhist, Sikh or Jaina religion who marries under this Act and to the property of the issue of such marriage, shall be regulated by the provisions of the Indian Succession Act, 1865²

Person marrying under Act not to have right of adoption

25. No person professing the Hindu Buddhist Sikh or Jaina religion who marries under this Act shall have any right of adoption

Adoption by father of person marrying under Act

26. When a person professing the Hindu Buddhist, Sikh or Jaina religion marries under this Act, his father shall, if he has no other son living, have the right to adopt another person as a son under the law to which he is subject]

¹ Ss 22 to 26 were added by s 4 of the Special Marriage (Amendment) Act, 1923 (30 of 1923)

² See now the Indian Succession Act 1925 (39 of 1925)

XLV
1860

XXI
1850

X of

FIRST SCHEDULE

(See section 4)

NOTICE OF MARRIAGE

To a Registrar of Marriages under
Act III of 1872 for the District

I hereby give you notice that a marriage under Act III of 1872 is intended to be had, within three calendar months from the date hereof, between me and the other party herein named and described (that is to say):—

Names.	Condition	Rank, or profession	Age	Dwelling place	Length of residence
A B	Unmarried Widower.	Landowner	Of full age.	23 days
C D	Spinster		Minor.

Witness my hand, this

day of

187 .

(Signed) A. B

SECOND SCHEDULE

(See section 10)

DECLARATION TO BE MADE BY THE BRIDEGROOM

I *A B*, hereby declare as follows —

1 I am at the present time unmarried

2 I do not profess the Christian, Jewish, Hindu, Muhammadan, Parsi, Buddhist, Sikh or Jaina religion ¹[or (as the case may be) I profess the Hindu, or the Buddhist, or the Sikh, or the Jaina religion]

3 I have completed my age of eighteen years

4 I am not related to *C D* [*the bride*] in any degree of consanguinity or affinity which would, according to the law to which I am subject, or to which the said *C D* is subject, and subject to the provisos of clause (4) of section 2 of Act III of 1872, render a marriage between us illegal.

[*And when the bridegroom has not completed his age of twenty-one years*

5 The consent of my father [or guardian *as the case may be*] has been given to a marriage between myself and *C D* and has not been revoked]

6 I am aware that, if any statement in this declaration is false, and if in making such statement I either know or believe it to be false or do not believe it to be true, I am liable to imprisonment, and also to fine

(Signed) *A B* [*the bridegroom*]

DECLARATION TO BE MADE BY THE BRIDE

I, *C D*, hereby declare as follows —

1 I am at the present time unmarried

2 I do not profess the Christian, Jewish, Hindu, Muhammadan, Parsi, Buddhist, Sikh or Jaina religion ¹[or (as the case may be) I profess the Hindu, or the Buddhist or the Sikh, or the Jaina religion]

3 I have completed my age of fourteen years

¹ Ins by s 5 of the Special Marriage (Amendment) Act, 1923 (30 of 1923)

4 I am not related to *A B* [*the bridegroom*] in any degree of consanguinity or affinity which would according to the law to which I am subject, or to which the said *A B* is subject, and subject to the provisos of clause (4) of section 2 of Act III of 1872, render a marriage between us illegal:

[*and when the bride has not completed her age of twenty one years, unless she is a widow*

5. The consent of *M N*, my father [*or guardian, as the case may be*] has been given to a marriage between myself and *A B* and has not been revoked.]

6 I am aware that, if any statement in this declaration is false, and if in making such statement, I either know or believe it to be false, or do not believe it to be true, I am liable to imprisonment, and also to fine.

(Signed) *C D* [*the bride*]

Signed in our presence by the above named *A B* and *C D*

G H,
I J, } [*three witnesses*].
K L, }

[*And when the bridegroom or bride has not completed the age of twenty-one years, except in the case of a widow:*

Signed in my presence and with my consent by the above-named *A B* and *C D*:

M. N., the father {or guardian}
 of the above-named *A B* (or *C D*,
 as the case may be)]

(Countersigned) *E F*,

Registrar of Marriages under Act III of 1872
 for the District of .

Dated the day of 18 .

THIRD SCHEDULE

(See section 13.)

REGISTRAR'S CERTIFICATE.

I, *E F*, certify that, on the _____ of _____ 18 __, appeared before me *A B* and *C D*, each of whom in my presence and in the presence of three credible witnesses, whose names are signed hereunder, made the declarations required by Act III of 1872, and that a marriage under the said Act was solemnized between them in my presence.

(Signed) *E F*,

Registrar of Marriages under Act III of 1872
for the District of _____.

(Signed) *A B*,*C D*.

<i>G H</i>	}	[three witnesses].
<i>I J</i>		
<i>K L</i>		

Dated the _____ day of _____ 18 __

FOURTH SCHEDULE

{ Rep. by the Repealing Act, 1876 (XII of 1876) }

THE PUNJAB LAWS ACT, 1872.

CONTENTS

PREAMBLE.

SECTIONS

- 1 Short title
- 2 Local extent
Commencement
- 3 Enactments in force
- 4 [*Repealed*]

Civil Judicature

- 5 Decisions in certain cases to be according to Native law
- 6 Decisions in cases not specially provided for
- 7 Local customs and mercantile usages when valid

Descent of Jaghirs

- 8 Rule of descent in family of assignee of land revenue
- 8A Power to annex certain conditions to assignments when the rule of descent is declared
- 8B Power to enforce rules and conditions under sections 8 and 8A
- 8C Authority for Provincial Government to declare former assignments subject to the rules, conditions and powers enacted by sections 8, 8A and 8B

Pre-emption

- 9 to 20 [*Repealed*]

Decrees concerning Land

- 21 [*Repealed*]

Insolvency

- 22 to 33 [*Repealed*]

Minors and the Court of Wards

- 34 to 38 [*Repealed*]

Criminal Judicature

- 39 Indian Penal Code to apply to offences committed previous to 1st January 1862
Saving of privileges conferred on certain Chiefs
- 39A Power to establish a system of village watchmen and municipal watchmen, and to make rules
- 39B Obligation to assist watchmen and headmen
Person obstructing watchman or headman may be arrested without warrant

SECTIONS

- 39C Power to direct local taxation for payment of police enrolled under Act V of 1861
 39D Notice of taxes proposed to be levied, objections to taxation, procedure thereon
 39E Power to fix rates of tax
 39F Power to make rules for collection of taxes
 39G [*Repealed*]

Honorary Police officers

- 40 Provincial Government may confer powers of police officer

Track Law

- 41 Trackers may call for assistance in carrying on tracks
 42 Penalty for withholding assistance or conniving at offence or escape Limit to fine
 Appeal to Chief Court
 Fine may be awarded to injured parties, and fee to tracker

Slaughter of Kine

- 43 Control of slaughter of kine and sale of beef

Armed Men and Foreign Vagrants

- 44 Control of entry into towns of bands of armed men
 45 Powers of Magistrate of District as to foreign vagrants
 46 Surveillance, etc., of band failing to comply with Magistrate's order

Miscellaneous

- 47 Crossing of streams on buoys or skins
 48 Use of pasturage or natural product of Crown land
 49 [*Repealed*]
 50 Power to make rules, as to matters mentioned in sections 43 to 48 existing rules
 50A Conditions of validity of rules hereafter made under this Act
 50B Penalties for breach of such rules
 51 Republication of rules and orders
 52 [*Repealed*]

SCHEDULE I — ENACTMENTS DECLARED TO BE IN FORCE

SCHEDULE II — [*Repealed*]

(Civil Judicature)

ACT No IV OF 1872

[28th March 1872]

An Act for declaring which of certain rules, laws and regulations have the force of law in the Punjab and for other purposes

WHEREAS certain rules, laws and regulations, made heretofore for the Punjab acquired the force of law under the provisions of section 15 of the Indian Councils Act, 1861, and whereas it is expedient to declare which of the said rules, laws and regulations shall henceforth be in force in the Punjab, and to amend consolidate or repeal others of the said rules, orders and regulations, It is hereby enacted as follows —

1 This Act may be called the Punjab Laws Act 1872

Preamble

2 It extends to the territories² now under the administration of the Lieutenant Governor of the Punjab, but not so as to alter the effect of any regulations made for any parts of the said territories under the Statute 33 Vict, cap 3, section 1,

Short title

Local extent

and it shall come into force on the first day of June, 1872

Commence ment.

3. The Regulations, Acts and orders specified in the First Schedule hereto annexed are in force in the Punjab to the extent specified in the third column of the said Schedule

Enactments in force

4. [Enactments repealed] Rep by the Second Repealing and Amending Act, 1914 (LVII of 1914), s 3 and Sch II

Civil Judicature

³[5. In questions regarding succession, special property of females, betrothal, marriage, divorce, dower, adoption, guardianship, minority, bastardy, family relations, wills, legacies, gifts, partitions, or any religious usage or institution, the rule of decision shall be—

Decisions in certain cases to be according to Native law

(a) Any custom applicable to the parties concerned, which is not contrary to justice, equity or good conscience, and has not been by this or any other enactment altered or

¹ Repealed by the Government of India Act

² Rep in the territories now forming the N W F P by s 5 of the N W F P Law and Justice Regulation 1901 (7 of 1901)

³ Subs for the original s 5 by s 1 of the Punjab Laws (Amendment) Act 1873 (12 of 1873) The provisions of this section have been rep in so far as they are inconsistent with those of the Muslim Personal Law (Shariat) Application Act 1937 (25 of 1937) see *ibid*, s 6

(Civil Judicature Descent of Jaghirs)

abolished, and has not been declared to be void by any competent authority,

- (b) the Muhammadan law, in cases where the parties are Muhammadans, and the Hindu law, in cases where the parties are Hindus, except in so far as such law has been altered or abolished by legislative enactment, or is opposed to the provisions of this Act, or has been modified by any such custom as is above referred to]

6 In cases not otherwise specially provided for, the Judges shall decide according to justice, equity and good conscience

7 All local customs and mercantile usages shall be regarded as valid unless they are contrary to justice, equity or good conscience, or have, before the passing of this Act, been declared to be void by any competent authority

Descent of Jaghirs

1[8 (1) Where 2[the Provincial Government] has heretofore declared or at any time heretofore declares that any rule of descent in respect of succession to any assignment of land revenue shall prevail in the family of assignees such rules of descent shall be deemed to prevail, and to have prevailed, from the time when the declaration was made, anything in any law or contract to the contrary notwithstanding

Provided that no such declaration shall hereafter be made unless and until—

- (a) 2[the Provincial Government] is satisfied that the rule of descent to be so declared actually prevails in the family and has been, continuously and without breach, observed in all successions (if any) to the assignment since it was made, or

- (b) the assignee or his successor in interest for the time being has by written instrument³ duly executed by him, either

¹ Ss 8, 84 8B and 8C were subs for s 8 by s 2 of the Punjab Descent of Jaghirs Act 1900 (Punjab 4 of 1900) The original section was as follows—

'In all cases in which Government has declared any rule of descent to prevail in any family or families of assignees of land revenue, such rule of descent shall be held to prevail, and to have prevailed, amongst them from the time when the declaration was made

² Subs by the A O for the Govt'

³ For notification remitting the stamp duty chargeable on instruments referred to in this clause, see Gazette of India, 1902, Pt. I, p 330

Decisions in cases not specially provided for

Local customs and mercantile usages when valid

Rule of descent in family of assignees of land revenue

(Descent of Jaghirs)

before or after the passing of this Act, signified, on behalf of himself and his family, acceptance of the rule of descent to be so declared and either no succession has taken place since such acceptance, or else in all successions which have taken place since such acceptance the assignment has in fact not devolved otherwise than it would have devolved had the said rule of descent been in force

(2) Any declaration made under sub section (1) may be amended, varied or rescinded by ¹[the Provincial Government], but always subject to the proviso thereto

(3) Where the rule of descent declared under this section to prevail involves the devolution of the assignment of land revenue to a single person as impartible property the assignment shall not be liable to seizure attachment or sequestration by process of any Court at the instance of a creditor for any demand against the assignee or his successor for the time being in interest or in satisfaction of any decree or order

8A When ¹[the Provincial Government] makes any declaration under section 8, it may, by notification in the ²[Official Gazette], direct that the rule of descent thereby declared to prevail shall be subject to the following conditions or either of them, namely —

Power to annex certain conditions to assignments when the rule of descent is declared

(a) that each successor to the assignment shall be approved and accepted as such by ³[the Provincial Government],

(b) that any successor to the assignment shall, if ¹[the Provincial Government] so require, make such provision out of the assignment as ¹[the Provincial Government] may consider suitable for the maintenance of the widow or widows (if any) and other members of the family (if any) of the last or any previous holder of the assignment :

Provided that—

(1) ¹[the Provincial Government] shall not refuse to approve and accept as a successor to the assignment any person who by the rule of descent declared under section 8 to prevail

¹ Subs. by the A. O. for the Govt."

² Subs. by the A. O. for local Government Gazette

³ Subs. by the A. O. for Govt."

*(Descent of Jaghirs Pre-emption Decrees concerning Land.
Insolvency)*

is next in order of succession unless that person is in the opinion of ¹[the Provincial Government] unfit to succeed to the assignment, and

- (2) if ²[the Provincial Government] should exercise its authority under clause (a) of this section and refuse to accept as the successor the person indicated by the rule of descent as next in order of succession, then the next person entitled to succeed after the person so rejected, who is approved and accepted by ¹[the Provincial Government], shall succeed

Power to enforce rules and conditions under sections 8 and 8A

8B When ²[the Provincial Government] has issued a notification under the authority of section 8 or of section 8A of this Act it shall have full power and authority to do all acts and things necessary to enforce the rule of descent declared by such notification to prevail and all or any of the conditions attached thereto

Authority for Provincial Government to declare former assignments subject to the rules conditions and powers enacted by sections 8 8A and 8B

8C Notwithstanding anything to the contrary which may appear in the conditions on which any assignment has been made, ²[the Provincial Government] is hereby empowered to declare that the rules conditions and powers enacted by sections 8, 8A and 8B of this Act may be made applicable after notification in the ³[Official Gazette] to such assignments]

Pre-emption

9 to 20. *Rep by the Punjab Pre-emption Act, 1905 (Punjab Act II of 1905), s. 2 (1)*

Decrees concerning Land

21. *[Copy of decrees affecting land to be forwarded to Deputy Commissioner] Rep by the Punjab Land Revenue Act, 1887 (XVII of 1887)*

Insolvency

22 to 32 *Rep by the Provincial Insolvency Act, 1907 (III of 1907)*

33 *[Saving of previous insolvency proceedings] Rep by the Amending Act, 1891 (XII of 1891)*

¹ Subs by the A O for Govt

² Subs by the A O for the Govt

³ Subs by the A O for local Government Gazette

(Minors and the Court of Wards Criminal Judicature)

Minors and the Court of Wards

34 to 38 Rep by the Punjab Court of Wards Act 1903 (Punjab Act II of 1903), s 2 (1)

Criminal Judicature

39 The provisions of the Indian Penal Code with the exception of Chapter VI shall be applicable to all offences committed before first January, 1862, in territory which was at the time of the commission of such offence, subject to ¹[the Provincial Government] of the Punjab

Indian Penal Code to apply to offences committed previous to 1st January, 1862

Provided that nothing contained in this section shall affect any privilege conferred on certain Chiefs in the Punjab by the ²[Central Government], or by the Board of Administration for the affairs of the Punjab, nor any indemnity or pardon granted by competent authority

Saving of privileges conferred on certain Chiefs

³[39A. ⁴[The Provincial Government] may establish a system of village watchmen or municipal watchmen in any part of the territories under its administration, and in furtherance of this object may, from time to time, make rules to provide for the following matters —

Power to establish a system of village-watchmen and municipal watchmen, and to make rules

- (a) the definition of the limits of watchmen's beats,
- (b) the determination of the several grades of watchmen, and the number of each grade to be appointed to each beat,
- (c) the appointment, suspension, dismissal and resignation of watchmen of each grade,
- (d) the equipment and discipline of, and the control and supervision over, such watchmen,
- (e) the conferring upon them, and the exercise by them, of any powers and the enjoyment by them of any protection or privilege, which may be exercised and enjoyed by a police officer under any law for the time being in force;
- (f) the performance by them of such duties relating to police, sanitation or statistics, or for the benefit of the villages, communities or municipalities within their respective beats, as ⁴[the Provincial Government] thinks fit;

¹ Subs by the A O for the Govt

² Subs by the A O for G G in C "

³ Ss 39A and 39B were sub^d by s 2 of the Punjab Laws (Amendment) Act 1881 (24 of 1881) for the ss 39A and 39B ins by s 2 of the Punjab Laws Amendment Act 1875 (15 of 1875)

⁴ Subs by the A O for 'The L G "

(Criminal Judicature)

- (g) the exercise of authority over and the rendering of aid to, such watchmen by headmen of the villages or members of the Municipal Committees of the towns comprised in their respective beats,
- (h) the performance, by the headmen of villages comprised in the beat of any watchman, of any of the duties of a village watchman in aid of, or substitution for, such watchman,
- (i) the exercise by such village headmen for the purposes referred to in clauses (g) and (h), or by members of Municipal Committees for the purposes referred to in clause (g) of this section, of any of the powers, and the enjoyment by such headmen or members of any privilege or protection, of a village watchman, or a municipal watchman, as the case may be,
- (j) the determination of the rate at which, and the mode in which, watchmen shall be paid, and, in the case of village watchmen of the mode in which their pay, the expenses of their equipment, and other charges connected with the village watchman system shall be provided for whether out of cesses or funds already leviable or available in the villages comprised in the beat or by a special tax in money or kind to be imposed on any class of persons residing or owning property in, or resorting to, such villages, or partly in one of these ways and partly in the other,
- (k) the collection with or without the aid of the village headmen, and by any process available for the realisation of the land revenue, of any tax imposed under clause (j) of this section, and the application of, and the mode of accounting for, the same, and generally for
- (l) the efficient working of the system of village watchmen or municipal watchmen

Provided—

first, that the rules to be made regarding the appointment of village watchmen shall allow to the headmen of the villages comprised in the beat to which such a watchman is to be appointed a power of nomination to be exercised in such a manner and subject to such reasonable conditions as may be prescribed by such rules

(Criminal Judicature)

secondly, that the rules to be made under clause (j) of this section with regard to village watchmen shall include provisions for recording and securing due consideration of the views and opinions on the matters therein referred to of the headmen of the villages comprised in each beat

39B. Every person is bound to render to a village watchman, or municipal watchman, or village-headman discharging the duties of a Police officer under the rules made hereunder, all the assistance which he is bound to render to a Police-officer

Obligation to assist watchmen and headmen

Any person who obstructs such watchman or headman in the discharge of such duties may be arrested without warrant by a Police officer or by any watchman or village headman empowered in this behalf by ¹[the Provincial Government]

Person obstructing watchman or headman may be arrested without warrant

²[39C. Whenever it seems to ¹[the Provincial Government] expedient that the duties of watch and ward and other internal police-service of any town or village not comprised within the limits of a municipality or within the limits of a village-watchman's beat as defined under the power conferred by section 39A should be performed by Police officers enrolled under ³Act V of 1861 ¹[the Provincial Government] may direct that the said service shall be so performed, and may also, ⁴* * * direct that the charges for the time being fixed by such Government on account of such service shall be defrayed by taxes to be levied in such town or village

Power to direct local taxation for payment of police enrolled under Act V of 1861

39D. When ¹[the Provincial Government] has, under section 39C, directed that taxes shall be levied in any town or village, the Deputy Commissioner may from time to time issue a public notice in such town or village explaining the nature of the taxes he proposes to levy

Notice of taxes proposed to be levied

Any inhabitant of such town or village objecting to the taxation thus proposed may, within fifteen days from the publication of such notice, send his objection in writing to the Deputy Commissioner

Objections to taxation.

After the expiry of fifteen days from the publication of the notice, the Deputy Commissioner may submit for the information of ¹[the Provincial Government] a report of the proposal made by him. Such

Procedure thereon.

¹ Subs by the A O for 'the L G

² Ss 39C to 39G were ins by s 2 of the Punjab Laws Amendment Act 1875 (15 of 1875)

³ The Police Act

⁴ The words "subject to the control of the G G in C." rep by the A O.

(Criminal Judicature Honorary Police officers Track Law)

report shall contain specific mention of the objections (if any) urged to his proposal and his opinion on such objections

No such tax shall be levied until it has upon such report been approved by ¹[the Provincial Government]

Power to fix rates of tax

39E When any such tax has been so approved by ¹[the Provincial Government], the Deputy Commissioner may from time to time, subject to such rules consistent with this Act as ¹[the Provincial Government] may from time to time prescribe determine the rates at which it is to be levied

Power to make rules for collection of taxes

39F ¹[The Provincial Government] may from time to time make rules to provide for the collection of such taxes by any process available for the realisation of the land revenue and to regulate the application and mode of accounting for the same

39G [Validation clause] Rep by the Amending Act 1891 (XII of 1891)]

Honorary Police officers

Provincial Government may confer powers of Police officer

40 ¹[The Provincial Government] may if it thinks fit confer on any person any of the powers which may be exercised by a Police officer under any Act for the time being in force ²[and may withdraw any powers so conferred]

Track Law

Trackers may call for assistance in carrying on tracks

41 When an offence has been or may reasonably be supposed to have been committed and the tracks of the persons who may reasonably be supposed to have committed such offence or of any animal or other property reasonably supposed to be connected with such offence, are followed to a spot within the immediate vicinity of a village the person following such tracks may call upon any headman or village watchman in such village to assist in carrying on the tracks

¹ Subs by the A O for the L G

² Ins by s 5 of the Punjab Laws (Amendment) Act 1878 (12 of 1878)

(Track Law Slaughter of Kine Armed Men and Foreign Vagrants)

42 If such headman or watchman do not forthwith give such assistance, or if the inhabitants of such village do not afford full opportunity for search in their houses for the offenders or, if from the circumstances of the case, there shall appear good reason to believe that the inhabitants of such village, or any of them were conniving at the offence or at the escape of the offenders, and such offenders cannot be traced beyond the village the Magistrate of the District may, with the previous sanction of the Commissioner of the Division inflict a fine upon such village not exceeding five hundred rupees except in the case of stolen property over five hundred rupees in value in which case the fine shall not exceed the value of such property

Penalty for withholding assistance or conniving at offence or escape

Limit to fine

An appeal against all convictions under this section shall lie to the Chief Court.

Appeal to Chief Court

The Magistrate may direct that the fine imposed under this section or any part thereof shall be awarded to any persons injured by such offence in compensation for such injury and in the case of stolen property recovered through the agency of a tracker may direct that such property be not restored to its owner until he has paid to such tracker such fee, not exceeding one fourth part of the value of the stolen property, as the said Magistrate seems fit

Fine may be awarded to injured parties with fee to tracker

Slaughter of Kine

43 The slaughter of kine and the sale of beef shall not take place except 2* * * subject to rules to be from time to time, either generally or in any particular instance, prescribed by 3[the Provincial Government].

Control of slaughter of kine and sale of beef

Armed men and Foreign Vagrants

44. No band of armed men shall enter into any city or town, except 2* * * subject to rules to be from time to time, either generally or in any particular instance, prescribed by 3[the Provincial Government].

Control of entry into towns of bands of armed men

¹ To be construed now High Court of Judicature at Lahore see the Punjab Courts Act 1918 (Punjab 6 of 1918) s 51

² The words 'with the consent and' rep by the Punjab Laws (Amendment) Act 1878 (12 of 1878), s 6

³ Subs by the A O for 'the L. G'

(Armed Men and Foreign Vagrants Miscellaneous)

Powers of
Magistrate
of District as
to foreign
vagrants

45. The Magistrate of the District may, if he considers that any band of foreign vagrants is likely to occasion a breach of the peace or to commit any offence under the Indian Penal Code, prohibit such band from entering his district, or, if they are already in his district, may require them within a given time to leave it

Surveillance,
etc of
band
failing to
comply with
Magistrate's
order

46 If any such band fail to comply with the orders of the said Magistrate within the prescribed period, he shall report the matter to 1[the Provincial Government], and 1[the Provincial Government] may give such directions for the surveillance, control or deportation of such band as to it seems fit

Miscellaneous

Crossing of
streams on
buoys or
skins

47. No person shall cross any river or stream on a buoy or inflated skin, nor shall have in his possession or custody any buoy or skin for the purpose of being used in crossing any river or stream, except 2* * * subject to rules to be from time to time either generally or in any particular instance, prescribed by 1[the Provincial Government].

Use of
pasturage
or natural
product of
Crown
land

48. No person shall make use of the pasturage or other natural product of any land being the property of 3[the Crown], except with the consent and subject to rules to be from time to time, either generally or in any particular instance, prescribed by 1[the government for whose purposes the land is vested in His Majesty]

49. [Growing, selling or keeping opium] Rep by the Opium Act, 1878 (I of 1878), s 2 and Sch

Power to
make rules
as to matters
mentioned in
sections 43
to 49

4[50 1[The Provincial Government] may from time to time make rules as to the matters mentioned in 5[sections 43 to 49] inclusive

1 Subs by the A O for the L G *

2 The words with the consent and rep by the Punjab Laws (Amendment) Act, 1878 (12 of 1878) s 6

3 Subs by the A O for the Govt

4 Ss 50 50A and 50B were subs by the Punjab Laws Amendment Act, 1875 (15 of 1875) s 3 for the original s 50

5 Subs by the Amending Act 1891 (12 of 1891), s 2 and Sch II, for 'sections forty three to forty nine'

(Miscellaneous)

All existing rules upon such matters, which might have been made Existing under this section had it been in force, shall be deemed to have been rules made hereunder.

50A. ¹[Rules made under this Act shall not be valid unless] —

(a) they are consistent with the laws for the time being in force in the Punjab,

(b) they are published in the Official Gazette,

Conditions of validity of rules hereafter made under this Act

2 * * * * *

50B. ³[The Provincial Government] may, in making any rule under any of the powers conferred by this Act, attach to the breach of it, in addition to any other consequences that would ensue from such breach, a punishment on conviction before a Magistrate not exceeding six months' imprisonment, or three hundred rupees fine, or both ⁴]

Penalties for breach of such rules

5[51 All rules which ³[the Provincial Government] is empowered to issue under this Act, and all circulars issued by the ⁶Chief Court, shall be republished from time to time by ³[the Provincial Government], and upon such republication, shall be arranged in the order of their subject matter, and all such alterations or amendments as may have been made since the last preceding publication thereof, or may have become necessary or advisable, shall be embodied therewith, and upon such republication all such rules and circulars previously issued shall be repealed]

Republication of rules and orders

52. [Recovery of advances made by Government] Rep by the Northern India Takhtav Act, 1879 (X of 1879)

¹ Subs by the A O for the words 'All rules hereafter made by the L G under any power conferred by this Act shall be subject to the control of the G G in C and no such rules shall be valid unless' The words 'All and subject to the control of the G G in C and no such rules shall be valid' were subs by the Decentralization Act, 1914 (4 of 1914), for the words 'No and valid', respectively

² Cl (c) of s 50A rep by the Decentralization Act, 1914 (4 of 1914)

³ Subs by the A O for the L G

⁴ See also the Punjab Laws (Amendment) Act 1878 (12 of 1878) s 7, which as it now stands after the partial repeal effected by Act 12 of 1891, is as follows —

"Whoever breaks any rule made by the Provincial Government under the same Act shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to fifty rupees, or with both"

⁵ Subs for the original s 51 by the Punjab Laws (Amendment) Act 1910 (Punjab 1 of 1910)

⁶ To be construed now 'High Court of Judicature at Lahore', see the Punjab Courts Act, 1918 (Punjab 6 of 1918), s 51

(Schedules)

1 SCHEDULE I.

ENACTMENTS DECLARED TO BE IN FORCE.

Explanation—This schedule does not refer to any Act which is in its terms applicable to the Punjab, or which has been extended to the Punjab by competent authority.

No and year	Title	Extent to which the enactment is in force
*Reg I of 1798	A Regulation to prevent Fraud and Injustice in Conditional Sales of Land under Deeds of bai bil wuffa, or other Deeds of the same nature	The whole, except such parts as relate to interest
* * * *	* * * *	* * *
*Reg XVII of 1806	A Regulation for extending to the province of Benares the Rates of Interest on future Loans and Provisions relative thereto, contained in Regulation XV, 1793, also for a general extension of the period fixed by Regulations I, 1798, and XXXIV, 1803, for the redemption of Mortgages and Conditional Sales of Land, under Deeds of bai bil wuffa Kutebaleb, or other similar designation	Sections 7 and 8
Reg III of 1818	A Regulation for the Confinement of State Prisoners	The whole
Reg XI of 1825	A Regulation for declaring the Rules to be observed in determining Claims to Lands gained by alluvion or by dereliction of a river or the sea	The whole
* * *	* * *	* * *
	Rules for the conservancy of Forests and Jungles in the Hill Districts of the Punjab Territories, sanctioned by the Governor General in Council in letter of the Secretary to the Government of India, No 1789, 21st May 1855	The whole

SCHEDULE II.

[ENACTMENTS REPEALED]

Rep. by the Second Repealing and Amending Act, 1914 (XVII of 1914).

¹ As so much of Act 4 of 1872 as related to Bengal Regulations 5 of 1817 and 20 of 1825 and Acts 40 of 1858 and 17 of 1861 was repealed by Acts 6 of 1878, 10 of 1882 8 of 1890 and 12 of 1891, respectively, the references to those Regulations and Acts in this Schedule are omitted

² So much of Act 4 of 1872 as relates to Bengal Regulations 1 of 1798 and 17 of 1806 will be repealed when the Transfer of Property Act, 1882 (4 of 1882), is extended to the Punjab, see ss 1, 2 and Sch of Act 4 of 1882

³ So much of the first Schedule as relates to Bengal State Offences Regulation, 1804 (10 of 1804) was repealed by Act 4 of 1922

THE INDIAN CONTRACT ACT, 1872

CONTENTS

PREAMBLE

PRELIMINARY

SECTIONS

- 1 Short title
Extent.
Commencement
- 2 Interpretation clause

CHAPTER I

OF THE COMMUNICATION ACCEPTANCE AND REVOCATION OF PROPOSALS

- 3 Communication acceptance and revocation of proposal-
- 4 Communication when complete
- 5 Revocation of proposals and acceptances
- 6 Revocation how made
- 7 Acceptance must be absolute
- 8 Acceptance by performing conditions or receiving consideration
- 9 Promises express and implied

CHAPTER II

OF CONTRACTS, VOIDABLE CONTRACTS AND VOID AGREEMENTS

- 10 What agreements are contracts
- 11 Who are competent to contract
- 12 What is a sound mind for the purposes of contracting
- 13 "Consent" defined
- 14 "Free consent" defined
- 15 "Coercion" defined

SECTIONS

- 16 "Undue influence" defined
- 17 "Fraud" defined
- 18 Misrepresentation" defined
- 19 Voidability of agreements without free consent
- 19A Power to set aside contract induced by undue influence
- 20 Agreement void where both parties are under mistake as to matter of fact
- 21 Effect of mistakes as to law
- 22 Contract caused by mistake of one party as to matter of fact
- 23 What considerations and objects are lawful and what not

Void Agreements

- 24 Agreements void if considerations and objects unlawful in part
- 25 Agreement without consideration void unless—it is in writing and registered
 - or is a promise to compensate for something done
 - or is a promise to pay a debt barred by limitation law
- 26 Agreement in restraint of marriage void
- 27 Agreement in restraint of trade void
 - Saving of agreement not to carry on business of which good will is sold
- 28 Agreements in restraint of legal proceedings void
 - Saving of contract to refer to arbitration dispute that may arise
 - Suits barred by such contracts
 - Saving of contract to refer questions that have already arisen
- 29 Agreements void for uncertainty
- 30 Agreements by way of wager void
 - Exception in favour of certain prizes for horse racing
 - Section 291A of the Indian Penal Code not affected

CHAPTER III

OF CONTINGENT CONTRACTS

SECTIONS

- 31 "Contingent contract" defined
 - 32 Enforcement of contracts contingent on an event happening
 - 33 Enforcement of contracts contingent on an event not happening
 - 34 When event on which contract is contingent to be deemed impossible, if it is the future conduct of a living person
 - 35 When contracts become void which are contingent on happening of specified event within fixed time
When contracts may be enforced which are contingent on specified event not happening within fixed time
 - 36 Agreement contingent on impossible events void
-

CHAPTER IV

OF THE PERFORMANCE OF CONTRACTS

Contracts which must be performed

- 37 Obligation of parties to contracts
- 38 Effect of refusal to accept offer of performance
- 39 Effect of refusal of party to perform promise wholly

By whom Contracts must be performed

- 40 Person by whom promise is to be performed
- 41 Effect of accepting performance from third person
- 42 Devolution of joint liabilities
- 43 Any one of joint promisors may be compelled to perform
Each promisor may compel contribution
Sharing of loss by default in contribution
- 44 Effect of release of one joint promisor
- 45 Devolution of joint rights

Time and Place for Performance

- 46 Time for performance of promise where no application is to be made and no time is specified

SECTIONS

- 47 Time and place for performance of promise where time is specified and no application to be made
- 48 Application for performance on certain day to be at proper time and place
- 49 Place for performance of promise where no application to be made and no place fixed for performance
- 50 Performance in manner or at time prescribed or sanctioned by promisee

Performance of Reciprocal Promises

- 51 Promisor not bound to perform unless reciprocal promisee ready and willing to perform
- 52 Order of performance of reciprocal promises
- 53 Liability of party preventing event on which contract is to take effect
- 54 Effect of default as to that promise which should be first performed in contract consisting of reciprocal promises
- 55 Effect of failure to perform at fixed time in contract in which time is essential
Effect of such failure when time is not essential
Effect of acceptance of performance at time other than that agreed upon
- 56 Agreement to do impossible act
Contract to do act afterwards becoming impossible or unlawful
Compensation for loss through non performance of act known to be impossible or unlawful
- 57 Reciprocal promise to do things legal and also other things illegal
- 58 Alternative promise one branch being illegal

Appropriation of Payments

- 59 Application of payment where debt to be discharged is indicated
- 60 Application of payment where debt to be discharged is not indicated
- 61 Application of payment where neither party appropriates

Contracts which need not be performed

SECTIONS

- 62 Effect of novation rescission, and alteration of contract
 - 63 Promisee may dispense with or remit performance of promise
 - 64 Consequences of rescission of voidable contract
 - 65 Obligation of person who has received advantage under void agreement or contract that becomes void
 - 66 Mode of communicating or revoking rescission of voidable contract
 - 67 Effect of neglect of promisee to afford promisor reasonable facilities for performance
-

CHAPTER V

OF CERTAIN RELATIONS PRESUMING THOSE CREATED BY CONTRACT

- 68 Claim for necessities supplied to person incapable of contracting or on his account
 - 69 Reimbursement of person paying money due by another, in payment of which he is interested
 - 70 Obligation of person enjoying benefit of non gratuitous act
 - 71 Responsibility of finder of goods
 - 72 Liability of person to whom money is paid or thing delivered, by mistake or under coercion
-

CHAPTER VI

OF THE CONSEQUENCES OF BREACH OF CONTRACT

- 73 Compensation for loss or damage caused by breach of contract
Compensation for failure to discharge obligation resembling those created by contract
- 74 Compensation for breach of contract where penalty stipulated for
- 75 Party rightfully rescinding contract entitled to compensation

CHAPTER VII

SALE OF GOODS

SECTIONS

76 to 123 [*Repealed*]

CHAPTER VIII

OF INDEMNITY AND GUARANTEE

- 124 Contract of indemnity defined
- 125 Rights of indemnity holder when sued
- 126 Contract of guarantee surety principal debtor and creditor
- 127 Consideration for guarantee
- 128 Surety's liability
- 129 Continuing guarantee
- 130 Revocation of continuing guarantee
- 131 Revocation of continuing guarantee by surety's death
- 132 Liability of two persons primarily liable not affected by arrangement between them that one shall be surety on other's default
- 133 Discharge of surety by variance in terms of contract
- 134 Discharge of surety by release or discharge of principal debtor
- 135 Discharge of surety when creditor compounds with gives time to or agrees not to sue principal debtor
- 136 Surety not discharged when agreement made with third person to give time to principal debtor
- 137 Creditor's forbearance to sue does not discharge surety
- 138 Release of one co-surety does not discharge others
- 139 Discharge of surety by creditor's act or omission impairing surety's eventual remedy
- 140 Rights of surety on payment or performance
- 141 Surety's right to benefit of creditor's securities
- 142 Guarantee obtained by misrepresentation invalid
- 143 Guarantee obtained by concealment invalid

SECTIONS

- 144 Guarantee on contract that creditor shall not act on it until co-surety joins
- 145 Implied promise to indemnify surety
- 146 Co sureties liable to contribute equally
- 147 Liability of co sureties bound in different sums

CHAPTER IX

OF BAILMENT

- 148 Bailment, bailor and bailee defined
- 149 Delivery to bailee how made
- 150 Bailor's duty to disclose faults in goods bailed
- 151 Care to be taken by bailee
- 152 Bailee when not liable for loss etc. of thing bailed
- 153 Termination of bailment by bailee's act inconsistent with conditions
- 154 Liability of bailee making unauthorized use of goods bailed
- 155 Effect of mixture with bailor's consent of his goods with bailee's
- 156 Effect of mixture without bailor's consent when the goods can be separated
- 157 Effect of mixture without bailor's consent when the goods can not be separated
- 158 Repayment by bailor of necessary expense
- 159 Restoration of goods lent gratuitously
- 160 Return of goods bailed on expiration of time or accomplishment of purpose
- 161 Bailee's responsibility when goods are not duly returned
- 162 Termination of gratuitous bailment by death
- 163 Bailor entitled to increase or profit from goods bailed
- 164 Bailor's responsibility to bailee
- 165 Bailment by several joint owners
- 166 Bailee not responsible on re-delivery to bailor without title

SECTIONS

- 167 Right of third person claiming goods bailed
- 168 Right of finder of goods
may sue for specific reward offered
- 169 When finder of thing commonly on sale may sell it
- 170 Bailee's particular lien
- 171 General lien of bankers, factors, wharfingers, attorneys and
policy brokers

Pailments of Pledges

- 172 Pledge pawnor and pawnee defined
- 173 Pawnee's right of retainer
- 174 Pawnee not to retain for debt or promise other than that for
which goods pledged
Presumption in case of subsequent advances
- 175 Pawnee's right as to extraordinary expenses incurred
- 176 Pawnee's right where pawnor makes default
- 177 Defaulting pawnor's right to redeem
- 178 Pledge by mercantile agent
- 178A Pledge by person in possession under voidable contract
- 179 Pledge where pawnor has only a limited interest

Suits by Pailees or Bailors against Wrong doers

- 180 Suit by bailor or bailee against wrong doer
- 181 Apportionment of relief or compensation obtained by such suits

CHAPTER V

AGENCY

Appointment and Authority of Agents

- 182 "Agent" and "principal" defined
- 183 Who may employ agent
- 184 Who may be an agent
- 185 Consideration not necessary
- 186 Agent's authority may be expressed or implied

SECTIONS

- 187 Definitions of express and implied authority
- 188 Extent of agent's authority
- 189 Agent's authority in an emergency

Sub agents

- 190 When agent cannot delegate
- 191 Sub agent defined
- 192 Representation of principal by sub agent properly appointed
Agent's responsibility for sub agent
Sub Agent's responsibility
- 193 Agent's responsibility for sub agent appointed without authority
- 194 Relation between principal and person duly appointed by agent
to act in business of agency
- 195 Agent's duty on naming such person

Ratification

- 196 Right of person as to acts done for him without his authority
Effect of ratification
- 197 Ratification may be expressed or implied
- 198 Knowledge requisite for valid ratification
- 199 Effect of ratifying unauthorized act forming part of a transaction
- 200 Ratification of unauthorized act cannot injure third person

Revocation of Authority

- 201 Termination of agency
- 202 Termination of agency where agent has an interest in subject matter
- 203 When principal may revoke agent's authority
- 204 Revocation where authority has been partly exercised
- 205 Compensation for revocation by principal, or renunciation by agent
- 206 Notice of revocation or renunciation

SPECIALLY

- 207 Revocation and renunciation may be expressed or implied
- 208 When termination of agent's authority takes effect as to agent, and as to third persons
- 209 Agent's duty on termination of agency by principal's death or insanity
- 210 Termination of sub agent's authority

Agent's duty to Principal

- 211 Agent's duty in conducting principal's business
- 212 Skill and diligence required from agent
- 213 Agent's accounts
- 214 Agent's duty to communicate with principal
- 215 Right of principal when agent deals, on his own account, in business of agency without principal's consent
- 216 Principal's right to benefit gained by agent dealing on his own account in business of agency
- 217 Agent's right of retainer out of sums received on principal's account
- 218 Agent's duty to pay sums received for principal
- 219 When agent's remuneration becomes due
- 220 Agent not entitled to remuneration for business mis conducted
- 221 Agent's lien on principal's property

Principal's Duty to Agent

- 222 Agent to be indemnified against consequences of lawful acts
- 223 Agent to be indemnified against consequences of acts done in good faith
- 224 Non liability of employer of agent to do a criminal act
- 225 Compensation to agent for injury caused by principal's neglect

Effect of Agency on Contract with third persons

- 226 Enforcement and consequences of agent's contracts
- 227 Principal how far bound when agent exceeds authority

SECTIONS

- 228 Principal not bound when excess of agent's authority is not separable
- 229 Consequences of notice given to agent
- 230 Agent cannot personally enforce, nor be bound by, contracts on behalf of principal
- Presumption of contract to contrary
- 231 Rights of parties to a contract made by agent not disclosed
- 232 Performance of contract with agent supposed to be principal
- 233 Right of person dealing with agent personally liable
- 234 Consequence of inducing agent or principal to act on belief that principal or agent will be held exclusively liable
- 235 Liability of pretended agent
- 236 Person falsely contracting as agent not entitled to performance
- 237 Liability of principal inducing belief that agent's unauthorized acts were authorized
- 238 Effect, on agreement of misrepresentation or fraud by agent

CHAPTER VI

OF PARTNERSHIP

239 to 266 [*Repealed*]

SCHEDULE.

[*Repealed*]

(Preliminary)

ACT No IX OF 1872¹

[25th April, 1872]

THE INDIAN CONTRACT ACT, 1872

Preamble

WHEREAS it is expedient to define and amend certain parts of the law relating to contracts, It is hereby enacted as follows —

PRELIMINARY

Short title

1 This Act may be called the Indian Contract Act, 1872

Extent
Commence
ment

It extends to the whole of British India², and it shall come into force on the first day of September, 1872

Enactments
repealed

3* * * Nothing herein contained shall affect the provisions of any Statute, Act or Regulation not hereby expressly repealed, nor any usage or custom of trade, nor any incident of any contract, not inconsistent with the provisions of this Act

¹ For the Statement of Objects and Reasons for the Bill which was based on a report of Her Majesty's Commissioners appointed to prepare a body of substantive law for India dated July 6th 1866 see Gazette of India 1867, Extraordinary, p 34; for the Report of the Select Committee see *ibid*, Extraordinary, dated 28th March, 1872 for discussions in Council, see *ibid*, 1857, Supplement, p 1064, *ibid*, 1871, p 313, and *ibid* 1872, p 527

The chapters and sections of the Transfer of Property Act, 1882 (4 of 1882), which relate to contracts are, in places in which that Act is in force, to be taken as part of Act 9 of 1872—see Act 4 of 1882 s 4

² This Act has been declared to be in force in—

the Santhal Parganas—see the Santhal Parganas Settlement Regulation (3 of 1872), s 3

British Baluchistan—see the British Baluchistan Laws Regulation, 1913 (2 of 1913), s 3

Panth Piploda—see the Panth Piploda Laws Regulation, 1929 (1 of 1929), s 2

It has been declared by notification under s 3 (a) of the Scheduled Districts Act, 1874 (14 of 1874), to be in force in—

the Tarai of the Province of Agra—see Gazette of India 1876, Pt I, p 505,

the Districts of Hazaribagh, Lohardaga and Manbhum, and Pargana Dhalbhum and the Kolhan in the District of Singhbhum—see Gazette of India, 1931, Pt I, p 504 (The District of Lohardaga included at this time the present District of Palamau which was separated in 1894 The District of Lohardaga is now called the Ranchi District—see Calcutta Gazette, 1899, Pt I, p 44)

³ The words, 'The enactments mentioned in the schedule hereto are repealed to the extent specified in the third column thereof but rep. by the Repealing and Amending Act, 1914 (10 of 1914)

{Preliminary Chapter I —Of the Communication, Acceptance and Revocation of Proposals }

2 In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context — Interpretation clause.

- (a) When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal
- (b) When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted becomes a promise
- (c) The person making the proposal is called the 'promisor,' and the person accepting the proposal is called the 'promisee'
- (d) When, at the desire of the promisor the promisee or any other person has done or abstained from doing or does or abstains from doing or promises, to do or to abstain from doing something, such act or abstinence or promise is called a consideration for the promise
- (e) Every promise and every set of promises, forming the consideration for each other, is an agreement
- (f) Promises which form the consideration or part of the consideration for each other are called reciprocal promises
- (g) An agreement not enforceable by law is said to be void
- (h) An agreement enforceable by law is a contract
- (i) An agreement which is enforceable by law at the option of one or more of the parties thereto but not at the option of the other or others is a voidable contract
- (j) A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable

CHAPTER I

OF THE COMMUNICATION, ACCEPTANCE AND REVOCATION OF PROPOSALS

3 The communication of proposals, the acceptance of proposals, and the revocation of proposals and acceptances, respectively, are deemed to be made by any act or omission of the party proposing, accepting or revoking by which he intends to communicate such proposal, acceptance or revocation, or which has the effect of communicating it

(Chapter I—Of the Communication, Acceptance and Revocation of Proposals)

Communication when complete

4 The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made

The communication of an acceptance is complete,—

as against the proposer, when it is put in a course of transmission to him, so as to be out of the power of the acceptor,

as against the acceptor, when it comes to the knowledge of the proposer

The communication of a revocation is complete,—

as against the person who makes it, when it is put into a course of transmission to the person to whom it is made, so as to be out of the power of the person who makes it,

as against the person to whom it is made, when it comes to his knowledge

• Illustrations

(a) A proposes, by letter, to sell a house to B at a certain price

The communication of the proposal is complete when B receives the letter

(b) B accepts A's proposal by a letter sent by post

The communication of the acceptance is complete,—

as against A, when the letter is posted,

as against B, when the letter is received by A

(c) A revokes his proposal by telegram

The revocation is complete as against A when the telegram is despatched. It is complete as against B when B receives it

B revokes his acceptance by telegram. B's revocation is complete as against B when the telegram is despatched, and as against A when it reaches him

Revocation of proposals and acceptance

5 A proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards

An acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards

Illustrations

A proposes, by a letter sent by post, to sell his house to B

B accepts the proposal by a letter sent by post

A may revoke his proposal at any time before or at the moment when B posts his letter of acceptance, but not afterwards

B may revoke his acceptance at any time before or at the moment when the letter communicating it reaches A, but not afterwards

(Chapter I—Of the Communication, Acceptance and Revocation of Proposals. Chapter II—Of Contracts, Voidable Contracts and Void Agreements)

6 A proposal is revoked—

- (1) by the communication of notice of revocation by the proposer to the other party, Revocation how made
- (2) by the lapse of the time prescribed in such proposal for its acceptance, or, if no time is so prescribed, by the lapse of a reasonable time without communication of the acceptance,
- (3) by the failure of the acceptor to fulfil a condition precedent to acceptance or
- (4) by the death or insanity of the proposer, if the fact of his death or insanity comes to the knowledge of the acceptor before acceptance

7 In order to convert a proposal into a promise the acceptance must— Acceptance must be absolute

- (1) be absolute and unqualified
- (2) be expressed in some usual and reasonable manner unless the proposal prescribes the manner in which it is to be accepted. If the proposal prescribes a manner in which it is to be accepted, and the acceptance is not made in such manner, the proposer may, within a reasonable time after the acceptance is communicated to him, insist that his proposal shall be accepted in the prescribed manner, and not otherwise, but if he fails to do so, he accepts the acceptance

8 Performance of the conditions of a proposal, or the acceptance of any consideration for a reciprocal promise which may be offered with a proposal is an acceptance of the proposal Acceptance by performing, conditions or receiving consideration.

9 In so far as the proposal or acceptance of any promise is made in words the promise is said to be express. In so far as such proposal or acceptance is made otherwise than in words, the promise is said to be implied Promises, express and implied

CHAPTER II

OF CONTRACTS, VOIDABLE CONTRACTS AND VOID AGREEMENTS

10. All agreements are contracts if they are made by the free consent of parties competent to contract for a lawful consideration What agreements are contracts

(Chapter II—Of Contracts, Voidable Contracts and Void Agreements.)

and with a lawful object, and are not hereby expressly declared to be void

Nothing herein contained shall affect any law in force in British India, and not hereby expressly repealed, by which any contract is required to be made in writing¹ or in the presence of witnesses, or any law relating to the registration of documents

Who are competent to contract

11 Every person is competent to contract who is of the age of majority according to the law to which he is subject,² and who is of sound mind, and is not disqualified from contracting by any law to which he is subject

What is a sound mind for the purposes of contracting

12 A person is said to be of sound mind for the purpose of making a contract if, at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interests

A person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind

A person who is usually of sound mind, but occasionally of unsound mind may not make a contract when he is of unsound mind

Illustrations

(a) A patient in a lunatic asylum, who is at intervals of sound mind, may contract during those intervals

(b) A sane man who is delirious from fever or who is so drunk that he cannot understand the terms of a contract or form a rational judgment as to its effect on his interests cannot contract whilst such delirium or drunkenness lasts

"Consent" defined

13 Two or more persons are said to consent when they agree upon the same thing in the same sense

"Free consent" defined

14 Consent is said to be free when it is not caused by—

- (1) coercion, as defined in section 15, or
- (2) undue influence, as defined in section 16, or
- (3) fraud, as defined in section 17, or
- (4) misrepresentation, as defined in section 18, or
- (5) mistake, subject to the provisions of sections 20, 21 and 22.

¹ See e.g., s. 25, *infra*, the Indian Copyright Act, 1914 (3 of 1914), s. 5 of the First Schedule, the Apprentices Act 1850 (19 of 1850) s. 8, the Conveyance of Land Act, 1854 (31 of 1854), ss. 14 and 18, the Carriers Act, 1865 (3 of 1865), ss. 6 and 7, the Merchant Shipping Act, 1894 (57 and 58 Vict., c. 66) s. 24 (Coll. Stat. Ind. Vol. 11), the Imperial Bank of India Act, 1920 (47 of 1920), s. 21, the Indian Companies Act, 1913 (7 of 1913), ss. 5, 19, 35 and 60

² See the Indian Majority Act, 1875 (9 of 1875)

(Chapter II —Of Contracts, Voidable Contracts and Void Agreements)

Consent is said to be so caused when it would not have been given but for the existence of such coercion undue influence, fraud, misrepresentation or mistake

15 Coercion is the committing, or threatening to commit, any act forbidden by the Indian Penal Code or the unlawful detaining or threatening to detain, any property to the prejudice of any person whatever with the intention of causing any person to enter into an agreement

Coercion¹
defined

Explanation—It is immaterial whether the Indian Penal Code is or is not in force in the place where the coercion is employed

Illustration

A on board an English ship on the high seas causes B to enter into an agreement by an act amounting to criminal intimidation under the Indian Penal Code

A afterwards sues B for breach of contract at Calcutta

A has employed coercion although his act is not an offence by the law of England and although section 505 of the Indian Penal Code was not in force at the time when or place where the act was done

1[16 (1) A contract is said to be induced by undue influence where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other

Undue
influence¹
defined.

(2) In particular and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate the will of another—

(a) where he holds a real or apparent authority over the other or where he stands in a fiduciary relation to the other or

(b) where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress

(3) Where a person who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other

¹ Subs. by s. 2 of the Indian Contract Act Amendment Act 1930 (6 of 1930), for original s. 16

(Chapter II —Of Contracts, Voidable Contracts and Void Agreements)

Nothing in this sub-section shall affect the provisions of section 111 of the Indian Evidence Act, 1872]

I of 18

Illustrations

(a) A having advanced money to his son, B, during his minority, upon B's coming of age obtains by misuse of parental influence, a bond from B for a greater amount than the sum due in respect of the advance. A employs undue influence.

(b) A, a man enfeebled by disease or age, is induced, by B's influence over him as his medical attendant to agree to pay B an unreasonable sum for his professional services. B employs undue influence.

(c) A being in debt to I, the money lender of his village, contracts a fresh loan on terms which appear to be unconscionable. It lies on B to prove that the contract was not induced by undue influence.

(d) A applies to a banker for a loan at a time when there is stringency in the money market. The banker declines to make the loan except at an unusually high rate of interest. A accepts the loan on these terms. This is a transaction in the ordinary course of business and the contract is not induced by undue influence.

"Fraud"
defined

17 'Fraud' means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent,¹ with intent to deceive another party thereto or his agent or to induce him to enter into the contract —

- (1) the suggestion, as a fact, of that which is not true, by one who does not believe it to be true,
- (2) the active concealment of a fact by one having knowledge or belief of the fact
- (3) a promise made without any intention of performing it,
- (4) any other act fitted to deceive,
- (5) any such act or omission as the law specially declares to be fraudulent

Explanation — Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak,² or unless his silence is, in itself, equivalent to speech

Illustrations

(a) A sells, by auction, to B, a horse which A knows to be unsound. A says nothing to B about the horse's unsoundness. This is not fraud in A.

(b) B is A's daughter and has just come of age. Here, the relation between the parties would make it A's duty to tell B if the horse is unsound.

(c) B says to A—'If you do not deny it I shall assume that the horse is sound.' A says nothing. Here A's silence is equivalent to speech.

(d) A and B being traders, enter upon a contract. A has private information of a change in prices which would affect B's willingness to proceed with the contract. A is not bound to inform B.

¹ Cr. 11 r. 8 233 *infra*

² See s. 143 *infra*

(Chapter II —Of Contracts, Voidable Contracts and Void Agreements)

18 "Misrepresentation" means and includes—

Misrepresentation
defined

- (1) the positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true
- (2) any breach of duty which, without an intent to deceive, gains an advantage to the person committing it or any one claiming under him by misleading another to his prejudice or to the prejudice of any one claiming under him;
- (3) causing however innocently, a party to an agreement to make a mistake as to the substance of the thing which is the subject of the agreement

19 When consent to an agreement is caused by coercion ^{1*} fraud or misrepresentation the agreement is a contract voidable at the option of the party whose consent was so caused

* Voidability
of agree-
ments with
out free
consent

A party to a contract whose consent was caused by fraud or misrepresentation may, if he thinks fit insist that the contract shall be performed and that he shall be put in the position in which he would have been if the representations made had been true

Exception —If such consent was caused by misrepresentation or by silence fraudulent within the meaning of section 17 the contract, nevertheless is not voidable if the party whose consent was so caused had the means of discovering the truth with ordinary diligence

Explanation —A fraud or misrepresentation which did not cause the consent to a contract of the party on whom such fraud was practised, or to whom such misrepresentation was made does not render a contract voidable

Illustrations

(1) A, intending to deceive B falsely represents that five hundred maunds of indigo are made annually at A's factory, and thereby induces B to buy the factory. The contract is voidable at the option of B

(2) A, by a misrepresentation leads B erroneously to believe that five hundred maunds of indigo are made annually at A's factory. B examines the accounts of the factory, which show that only four hundred maunds of indigo have been made. After this B buys the factory. The contract is not voidable on account of A's misrepresentation

(3) A fraudulently informs B that A's estate is free from incumbrance. B thereupon buys the estate. The estate is subject to a mortgage. B may either void the contract, or may insist on its being carried out and the mortgage debt redeemed

(4) B, having discovered a vein of ore on the estate of A adopts means to conceal, and does conceal the existence of the ore from A. Through A's ignorance B is enabled to buy the estate at an under value. The contract is voidable at the option of A

¹ The words "undue influence", rep. by the Indian Contract Act Amendment Act, 1899 (6 of 1899), s. 3

(Chapter II —Of Contracts, Voidable Contracts and Void Agreements)

(e) A is entitled to succeed to an estate at the death of B, B dies C having received intelligence of B's death prevents the intelligence reaching A and thus induces A to sell him his interest in the estate. The sale is voidable at the option of A.

Power to set aside contract induced by undue influence

¹[19A When consent to an agreement is caused by undue influence the agreement is a contract voidable at the option of the party whose consent was so caused]

Any such contract may be set aside either absolutely or, if the party who was entitled to avoid it has received any benefit thereunder, upon such terms and conditions as to the Court may seem just

Illustrations

(a) A's son has forged P's name to a promissory note. B under threat of prosecuting A's son obtains a bond from A for the amount of the forged note. If B sues on this bond the Court may set the bond aside.

(b) A money lender advances Rs 100 to B an agriculturist and by undue influence induces B to execute a bond for Rs 200 with interest at 6 per cent per month. The Court may set the bond aside ordering B to repay the Rs 100 with such interest as may seem just.

20 Where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement the agreement is void.

Explanation—An erroneous opinion as to the value of the thing which forms the subject matter of the agreement is not to be deemed a mistake as to a matter of fact.

Illustrations

(a) A agrees to sell to B a specific cargo of goods supposed to be on its way from England to Bombay. It turns out that before the day of the bargain the ship conveying the cargo had been cast away and the goods lost. Neither party was aware of the facts. The agreement is void.

(b) A agrees to buy from B a certain horse. It turns out that the horse was dead at the time of the bargain, though neither party was aware of the fact. The agreement is void.

(c) A being entitled to an estate for the life of B agrees to sell it to C. B was dead at the time of the agreement, but both parties were ignorant of the fact. The agreement is void.

21 A contract is not voidable because it was caused by a mistake as to any law in force in British India, but a mistake as to a law not in force in British India has the same effect as a mistake of fact.

²[After the establishment of the Federation of India this section applies in relation to Central Acts made for a Federated State as it applies to laws in force in British India.]

Illustration

A and B make a contract grounded on the erroneous belief that a particular debt is barred by the Indian Law of Limitation: the contract is not voidable.

³*

¹ Ins 1 v s 3 of the Indian Contract Act Amendment Act, 1899 (6 of 1899)

² Ins by the A O

³ Second illustration to s 21 rep by the Repealing and Amending Act, 1917 (24 of 1917) s 3 and Sch II

(Chapter II —Of Contracts Voidable Contracts and Void Agreements)

22 A contract is not voidable merely because it was caused by one of the parties to it being under a mistake as to a matter of fact

Contract caused by mistake of one party as to matter of fact

23 The consideration or object of an agreement is lawful, unless—
it is forbidden by law¹ or

What considerations and objects are lawful and what not

is of such a nature that, if permitted, it would defeat the provisions of any law or

is fraudulent or

involves or implies injury to the person or property of another, or the Court regards it as immoral or opposed to public policy

In each of these cases the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void

Illustrations

(a) A agrees to sell his house to B for 10 000 rupees. Here B's promise to pay the sum of 10 000 rupees is the consideration for A's promise to sell the house and A's promise to sell the house is the consideration for B's promise to pay the 10 000 rupees. These are lawful considerations.

(b) A promises to pay B 1 000 rupees at the end of six months if C who owes that sum to B fails to pay it. B promises to grant time to C accordingly. Here the promise of each party is the consideration for the promise of the other party and they are lawful considerations.

(c) A promises for a certain sum paid to him by B to make good to B the value of his ship if it is wrecked on a certain voyage. Here A's promise is the consideration for B's payment and B's payment is the consideration for A's promise and these are lawful considerations.

(d) A promises to maintain B's child and B promises to pay A 1 000 rupees yearly for the purpose. Here the promise of each party is the consideration for the promise of the other party. They are lawful considerations.

(e) A, B and C enter into an agreement for the division among them of gains acquired or to be acquired by them by fraud. The agreement is void as its object is unlawful.

(f) A promises to obtain for B an employment in the public service and B promises to pay 1 000 rupees to A. The agreement is void, as the consideration for it is unlawful.

(g) A being agent for a landed proprietor agrees for money without the knowledge of his principal to obtain for B a lease of land belonging to his principal. The agreement between A and B is void as it implies a fraud by concealment by A on his principal.

(h) A promises B to drop a prosecution which he has instituted against B for robbery, and B promises to restore the value of the things taken. The agreement is void as its object is unlawful.

(i) A's estate is sold for arrears of revenue under the provisions of an Act of the Legislature by which the defaulter is prohibited from purchasing the estate. B, upon an understanding with A, becomes the purchaser and agrees to convey the

¹ See ss. 26, 27, 28, 30, *infra*

(Chapter II—Of Contracts Voidable Contracts and Void Agreements)

estate to A upon receiving from him the price which B has paid. The agreement is void as it renders the transaction in effect a purchase by the defaulter and would so defeat the object of the law.

(j) A who is B's mukhtar promises to exercise his influence as such with B in favour of C and C promises to pay 1000 rupees to A. The agreement is void because it is immoral.

(k) A agrees to let her daughter to hire to B for concubinage. The agreement is void because it is immoral though the letting may not be punishable under the Indian Penal Code.

Void Agreements

XLV
186

24 If any part of a single consideration for one or more objects, or any one or any part of any one of several considerations for a single object is unlawful the agreement is void.

Illustration

A promises to superintend on behalf of B a legal manufacture of indigo and an illegal traffic in other articles. B promises to pay to A a salary of 10000 rupees a year. The agreement is void the object of A's promise and the consideration for B's promise being in part unlawful.

25 An agreement made without consideration is void, unless—

(1) it is expressed in writing and registered under the law for the time being in force for the registration of [documents], and is made on account of natural love and affection between parties standing in a near relation to each other, or unless

(2) it is a promise to compensate wholly or in part a person who has already voluntarily done something for the promisor or something which the promisor was legally compellable to do or unless

(3) it is a promise made in writing and signed by the person to be charged therewith or by his agent generally or specially authorized in that behalf to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits.

In any of the foregoing cases such an agreement is a contract.

Explanation 1—Nothing in this section shall affect the validity as between the donor and donee of any gift actually made.

Explanation 2—An agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate but the inadequacy of the consideration may be taken into account by the Court in determining the question whether the consent of the promisor was freely given.

Illustrations

(a) A promises for no consideration to give to B Rs. 1000. This is a void agreement.

Agreements void if considerations and objects unlawful in part

Agreement without consideration void unless it is in writing and registered or is a promise to compensate for something done or a promise to pay a debt barred by limitation law

(Chapter II.—Of Contracts, Voidable Contracts and Void Agreements)

(b) A, for natural love and affection, promises to give his son, B Rs 1,000 A puts his promise to B into writing and registers it This is a contract

(c) A finds B's purse and gives it to him B promises to give A Rs 50 This is a contract

(d) A supports B's infant son B promises to pay A's expenses in so doing This is a contract

(e) A owes B Rs 1,000, but the debt is barred by the Limitation Act A signs a written promise to pay B Rs 500 on account of the debt This is a contract

(f) A agrees to sell a horse worth Rs 1,000 for Rs 10 A's consent to the agreement was freely given The agreement is a contract notwithstanding the inadequacy of the consideration

(g) A agrees to sell a horse worth Rs 1,000 for Rs 10 A denies that his consent to the agreement was freely given

The inadequacy of the consideration is a fact which the Court should take into account in considering whether or not A's consent was freely given

26 Every agreement in restraint of the marriage of any person, other than a minor, is void Agreement in restraint of marriage void

27 Every agreement by which any one is restrained from exercising a lawful profession, trade or business of any kind is to that extent void Agreement in restraint of trade void

Exception 1—One who sells the good will of a business may agree with the buyer to refrain from carrying on a similar business, within specified local limits so long as the buyer or any person deriving title to the good will from him, carries on a like business therein Provided that such limits appear to the Court reasonable, regard being had to the nature of the business Saving of agreement not to carry on business of which good will is sold

1* * * *

28. Every agreement, by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights, is void to that extent Agreements in restraint of legal proceedings void

Exception 1—This section shall not render illegal a contract by which two or more persons agree that any dispute which may arise between them in respect of any subject or class of subjects shall be referred to arbitration, and that only the amount awarded in such arbitration shall be recoverable in respect of the dispute so referred Saving of contract to refer to arbitration dispute that may arise

1 Exceptions 2 and 3 relating to agreements between partners upon or in anticipation of, dissolution of partnership and continuation of partnership respectively, are by the Indian Partnership Act 1932 (19 of 1932) s. 33 and s. 34. See now ss. 11 (2) and 36 (2) of that Act.

(Chapter II —Of Contracts, Voidable Contracts and Void Agreements)

*Suits barred
by such
Contracts*

1 When such a contract has been made, a suit may be brought for its specific performance, and if a suit, other than for such specific performance, or for the recovery of the amount so awarded, is brought by one party to such contract against any other such party in respect of any subject which they have so agreed to refer, the existence of such contract shall be a bar to the suit

*Saving of
contract to
refer
questions
that have
already
arisen*

Exception 2 —Nor shall this section render illegal any contract in writing, by which two or more persons agree to refer to arbitration any question between them which has already arisen, or affect any provision of any law in force for the time being as to references to arbitration 2

*Agreements
void for
uncertainty*

29 Agreements, the meaning of which is not certain, or capable of being made certain, are void

Illustrations

(a) A agrees to sell to B a hundred tons of oil. There is nothing whatever to show what kind of oil was intended. The agreement is void for uncertainty

(b) A agrees to sell to B one hundred tons of oil of a specified description, known as an article of commerce. There is no uncertainty here to make the agreement void

(c) A, who is a dealer in cocoanut oil only, agrees to sell to B "one hundred tons of oil." The nature of A's trade affords an indication of the meaning of the words, and A has entered into a contract for the sale of one hundred tons of cocoanut oil

(d) A agrees to sell to B all the grain in my granary at Ramnagar. There is no uncertainty here to make the agreement void

(e) A agrees to sell to B one thousand maunds of rice at a price to be fixed by C. As the price is capable of being made certain there is no uncertainty here to make the agreement void

(f) A agrees to sell to B my white horse for rupees five hundred or rupees one thousand. There is nothing to show which of the two prices was to be given. The agreement is void

*Agreements
by way of
wager void*

30 Agreements by way of wager are void; and no suit shall be brought for recovering anything alleged to be won on any wager, or entrusted to any person to abide the result of any game or other uncertain event on which any wager is made

*Exception in
favour of
certain
prizes
for horse
racing*

This section shall not be deemed to render unlawful a subscription, or contribution, or agreement to subscribe or contribute, made or entered into for or toward any plate, prize or sum of money, of the

¹ The second clause of exception 1 to section 29 was repealed by the Specific Relief Act 1877 (1 of 1877). The clause is however printed here in italics because the Contract Act is in force in certain "Isolated Districts" to which the Specific Relief Act does not apply.

² Cf. the Code of Civil Procedure 1908 (Act 5 of 1908) s. 49 and Sch. II, the Indian Arbitration Act 1899 (9 of 1899) and the Indian Companies Act 1913 (7 of 1913) s. 352.

(Chapter II —Of Contracts, Voidable Contracts and Void Agreements
Chapter III —Of Contingent Contracts)

value or amount of five hundred rupees or upwards, to be awarded to the winner or winners of any horse race ¹

Nothing in this section shall be deemed to legalize any transaction connected with horse racing, to which the provisions of section 294A of the Indian Penal Code not affect ¹

CHAPTER III

OF CONTINGENT CONTRACTS

31 A 'contingent contract' is a contract to do or not to do some thing, if some event, collateral to such contract, does or does not happen ^{Contingent contract defined}

Illustration

A contracts to pay B Rs 10 000 if B's house is burnt This is a contingent contract

32 Contingent contracts to do or not to do anything if an uncertain future event happens cannot be enforced by law unless and until that event has happened ^{Enforcement of contracts contingent on an event happening}

If the event becomes impossible, such contracts become void

Illustrations

(a) A makes a contract with B to buy B's horse if A survives C This contract cannot be enforced by law unless and until C dies in A's lifetime

(b) A makes a contract with B to sell a horse to B at a specified price if C to whom the horse has been offered refuses to buy him The contract cannot be enforced by law unless and until C refuses to buy the horse

(c) A contracts to pay B a sum of money when B marries C C dies without being married to B The contract becomes void

33 Contingent contracts to do or not to do anything if an uncertain future event does not happen can be enforced when the happening of that event becomes impossible, and not before ^{Enforcement of contracts contingent on an event not happening}

Illustration

A agrees to pay B a sum of money if a certain ship does not return. The ship is sunk The contract can be enforced when the ship sinks

(Chapter III —Of Contingent Contracts Chapter IV —Of the Performance of Contracts)

When event on which contract is contingent to be deemed impossible if it is the future conduct of a living person

34 If the future event on which a contract is contingent is the way in which a person will act at an unspecified time, the event shall be considered to become impossible when such person does anything which renders it impossible that he should so act within any definite time, or otherwise than under further contingencies

Illustration

A agrees to pay B a sum of money if B marries C
C marries D The marriage of B to C must now be considered impossible, although it is possible that D may die and that C may afterwards marry B

When contracts become void which are contingent on happening of specified event within fixed time

35 Contingent contracts to do or not to do anything if a specified uncertain event happens within a fixed time become void if, at the expiration of the time fixed such event has not happened, or if, before the time fixed, such event becomes impossible

When contracts may be enforced which are contingent on specified event not happening within fixed time

Contingent contracts to do or not to do anything if a specified uncertain event does not happen within a fixed time may be enforced by law when the time fixed has expired and such event has not happened or, before the time fixed has expired, if it becomes certain that such event will not happen

Illustrations

(a) A promises to pay B a sum of money if a certain ship returns within a year The contract may be enforced if the ship returns within the year, and becomes void if the ship is burnt within the year

(b) A promises to pay B a sum of money if a certain ship does not return within a year The contract may be enforced if the ship does not return within the year, or is burnt within the year

Agreement contingent on impossible event is void

36 Contingent agreements to do or not to do anything, if an impossible event happens, are void, whether the impossibility of the event is known or not to the parties to the agreement at the time when it is made

Illustrations

(a) A agrees to pay B 1000 rupees if two straight lines should enclose a space The agreement is void

(b) A agrees to pay B 1000 rupees if B will marry A's daughter C C was dead at the time of the agreement The agreement is void

CHAPTER IV

OF THE PERFORMANCE OF CONTRACTS

Contracts which must be performed

(1) Definition of contracts

37. The parties to a contract must either perform or offer to perform, their respective promises, unless such performance is dispensed with or excused under the provisions of this Act, or of any other law

(Chapter IV —Of the Performance of Contracts)

Promises bind the representatives of the promisors in case of the death of such promisors before performance, unless a contrary intention appears from the contract

Illustrations

(a) A promises to deliver goods to B on a certain day on payment of Rs 1,000 A dies before that day A's representatives are bound to deliver the goods to B and B is bound to pay the Rs 1,000 to A's representatives

(b) A promises to paint a picture for P by a certain day at a certain price A dies before the day The contract cannot be enforced either by A's representatives or by B

38 When a promisor has made an offer of performance to the promisee and the offer has not been accepted the promisor is not responsible for non performance nor does he thereby lose his rights under the contract

Effect of refusal to accept offer of performance

Every such offer must fulfil the following conditions —

(1) it must be unconditional

(2) it must be made at a proper time and place and under such circumstances that the person to whom it is made may have a reasonable opportunity of ascertaining that the person by whom it is made is able and willing there and then to do the whole of what he is bound by his promise to do

(3) if the offer is an offer to deliver anything to the promisee the promisee must have a reasonable opportunity of seeing that the thing offered is the thing which the promisor is bound by his promise to deliver

An offer to one of several joint promisees has the same legal consequences as an offer to all of them

Illustration

A contracts to deliver to B at his warehouse on the 1st March 1873 100 bales of cotton of a particular quality In order to make an offer of a performance with the effect stated in this section A must bring the cotton to B's warehouse on the appointed day under such circumstances that B may have a reasonable opportunity of satisfying himself that the thing offered is cotton of the quality contracted for, and that there are 100 bales

39 When a party to a contract has refused to perform or disabled himself from performing his promise in its entirety, the promisee may put an end to the contract unless he has signified by word or conduct his acquiescence in its continuance

Effect of refusal of party to perform promise wholly

Illustrations

(1) A singer, enters into a contract with B the manager of a theatre to sing at the theatre two nights in every week during the next two months and B engages to pay her 100 rupees for each night's performance On the sixth night A withdraws herself from the theatre B is at liberty to put an end to the contract

(Chapter IV —Of the Performance of Contracts)

(b) A singer enters into a contract with B the manager of a theatre to sing at his theatre two nights in every week during the next two months and B engages to pay her at the rate of 100 rupees for each night. On the sixth night A wilfully absents herself. With the assent of B A sings on the seventh night. B has signified his acquiescence in the continuance of the contract and cannot now put an end to it but is entitled to compensation for the damage sustained by him through A's failure to sing on the sixth night.

By whom Contracts must be performed

Person by whom promise is to be performed

40 If it appears from the nature of the case that it was the intention of the parties to any contract that any promise contained in it should be performed by the promisor himself such promise must be performed by the promisor. In other cases the promisor or his representatives may employ a competent person to perform it.

Illustrations

(a) A promises to pay B a sum of money. A may perform this promise either by personally paying the money to B or by causing it to be paid to B by another and if A dies before the time appointed for payment his representatives must perform the promise or employ some proper person to do so.

(b) A promises to paint a picture for B. A must perform this promise personally.

Effect of accepting performance from third person

41 When a promisee accepts performance of the promise from a third person he cannot afterwards enforce it against the promisor.

Devolution of joint liabilities

42 When two or more persons have made a joint promise then, unless a contrary intention appears by the contract all such persons during their joint lives and after the death of any of them, his representative jointly with the survivor or survivors and after the death of the last survivor the representatives of all jointly must fulfil the promise.

Any one of joint promisors may be compelled to perform

43 When two or more persons make a joint promise, the promisee may in the absence of express agreement to the contrary, compel any [one or more] of such joint promisors to perform the whole of the promise.

Each promisor may compel contribution

Each of two or more joint promisors may compel every other joint promisor to contribute equally with himself to the performance of the promise, unless a contrary intention appears from the contract.

Sharing of loss by default in contribution

If any one of two or more joint promisors makes default in such contribution the remaining joint promisors must bear the loss arising from such default in equal shares.

(Chapter IV —Of the Performance of Contracts)

Explanation—Nothing in this section shall prevent a surety from recovering from his principal payments made by the surety on behalf of the principal or entitle the principal to recover anything from the surety on account of payments made by the principal

Illustrations

(a) A B and C jointly promise to pay D 3000 rupees D may compel either A or B or C to pay him 3000 rupees

(b) A B and C jointly promise to pay D the sum of 3000 rupees C is compelled to pay the whole A is insolvent but his assets are sufficient to pay one half of his debts C is entitled to receive 500 rupees from A's estate and 1250 rupees from B

(c) A B and C are under a joint promise to pay D 3000 rupees C is unable to pay anything and A is compelled to pay the whole A is entitled to receive 1000 rupees from B

(d) A B and C are under a joint promise to pay D 3000 rupees A and B being only sureties for C C fails to pay A and B are compelled to pay the whole sum They are entitled to recover it from C

44 Where two or more persons have made a joint promise a release of one of such joint promisors by the promisee does not discharge the other joint promisor or joint promisors neither does it free the joint promisors so released from responsibility to the other joint promisor or joint promisors ^{Effect of release of one joint promisor} 1

45 When a person makes a promise to two or more persons jointly then unless a contrary intention appears from the contract the right to claim performance rests as between him and them, with them during their joint lives and after the death of any of them, with the representative of such deceased person jointly with the survivor or survivors and after the death of the last survivor with the representatives of all jointly ^{Devolution of joint rights} 2

III. Strict on

A in consideration of 5000 rupees lent to him by B and C promises B and C jointly to repay them that sum with interest on a day specified B dies The right to claim performance rests with the representative jointly with C during C's life and after the death of C with the representatives of B and C jointly

Time and Place for Performance

46 Where, by the contract a promisor is to perform his promise without application by the promisee and no time for performance is specified the engagement must be performed within a reasonable time ^{Time for performance of promise where no application is to be made and no time is specified}

Explanation—The question what is a reasonable time is in each particular case a question of fact

1 See s 138 *infra*

2 For an exception to s 45 in case of Government securities see the Indian Securities Act 1970 (10 of 1970) s 4

(Chapter IV—Of the Performance of Contracts.)

Time and place for performance of promise where time is specified and no application to be made

47 When promise is to be performed on a certain day, and the promisor has undertaken to perform it without application by the promisee, the promisor may perform it at any time during the usual hours of business on such day and at the place at which the promise ought to be performed

Illustration

A promises to deliver goods at B's warehouse on the first January. On that day A brings the goods to B's warehouse but after the usual hour for closing it, and they are not received. A has not performed his promise

Application for performance on certain day to be at proper time and place

48 When a promise is to be performed on a certain day, and the promisor has not undertaken to perform it without application by the promisee, it is the duty of the promisee to apply for performance at a proper place and within the usual hours of business

Explanation—The question 'what is a proper time and place' is, in each particular case, a question of fact

Place for performance of promise where no application to be made and no place fixed for performance

49 When a promise is to be performed without application by the promisee and no place is fixed for the performance of it, it is the duty of the promisor to apply to the promisee to appoint a reasonable place for the performance of the promise and to perform it at such place

Illustration

A undertakes to deliver a thousand mounds of jute to B on a fixed day. A must apply to B to appoint a reasonable place for the purpose of receiving it and must deliver it to him at such place

Performance in manner or at time prescribed or sanctioned by promisee

50 The performance of any promise may be made in any manner, or at any time which the promisee prescribes or sanctions

Illustrations

(a) B owes A 2000 rupees. A desires B to pay the amount to A's account with C, a banker. B, who also banks with C, orders the amount to be transferred from his account to A's credit, and this is done by C. Afterwards, and before A knows of the transfer, C fails. There has been a good payment by B.

(b) A and B are mutually indebted. A and B settle an account by setting off one item against another, and B pays A the balance found to be due from him upon such settlement. This amounts to a payment by A and B, respectively, of the sums which they owed to each other.

(c) A owes B 2000 rupees. B accepts some of A's goods in reduction of the debt. The delivery of the goods operates as a part payment.

(d) A desires B, who owes him Rs. 100 to send him a note for Rs. 100 by post. The debt is discharged as soon as B puts into the post a letter containing the note duly addressed to A.

(Chapter IV —Of the Performance of Contracts)

Performance of Reciprocal Promises

51 When a contract consists of reciprocal promises to be simultaneously performed, no promisor need perform his promise unless the promisee is ready and willing to perform his reciprocal promise

Promisor not bound to perform, unless reciprocal promisee ready and willing to perform

Illustrations

(a) A and B contract that A shall deliver goods to B to be paid for by B on delivery

A need not deliver the goods unless B is ready and willing to pay for the goods on delivery

B need not pay for the goods unless A is ready and willing to deliver them on payment

(b) A and B contract that A shall deliver goods to B at a price to be paid by instalments, the first instalment to be paid on delivery

A need not deliver, unless B is ready and willing to pay the first instalment on delivery

B need not pay the first instalment, unless A is ready and willing to deliver the goods on payment of the first instalment

52 Where the order in which reciprocal promises are to be performed is expressly fixed by the contract they shall be performed in that order and where the order is not expressly fixed by the contract, they shall be performed in that order which the nature of the transaction requires

Order of performance of reciprocal promises

Illustrations

(a) A and B contract that A shall build a house for B at a fixed price A's promise to build the house must be performed before B's promise to pay for it

(b) A and B contract that A shall make over his stock in trade to B at a fixed price, and B promises to give security for the payment of the money A's promise need not be performed until the security is given for the nature of the transaction requires that A should have security before he delivers up his stock

53 When a contract contains reciprocal promises, and one party to the contract prevents the other from performing his promise, the contract becomes voidable at the option of the party so prevented, and he is entitled to compensation from the other party for any loss which he may sustain in consequence of the non performance of the contract

Liability of party preventing event on which the contract is to take effect

Illustration

A and B contract that B shall execute certain work for A for a thousand rupees B is ready and willing to execute the work accordingly, but A prevents him from doing so The contract is voidable at the option of B and if he elects to rescind it, he is entitled to recover from A compensation for any loss which he has incurred by its non performance

54 When a contract consists of reciprocal promises such that one of them cannot be performed, or that its performance cannot be claimed till the other has been performed and the promisor of the promise in

Effect of default as to that promise

(Chapter IV —Of the Performance of Contracts)

be first performed, in contract consisting of reciprocal promises

mentioned fails to perform it, such promisor cannot claim the performance of the reciprocal promise, and must make compensation to the other party to the contract for any loss which such other party may sustain by the non-performance of the contract

Illustrations

(a) A hires B's ship to take in and convey, from Calcutta to the Mauritius, a cargo to be provided by A. B receiving a certain freight for its conveyance. A does not provide any cargo for the ship. A cannot claim the performance of B's promise, and must make compensation to B for the loss which B sustains by the non-performance of the contract.

(b) A contracts with B to execute certain builder's work for a fixed price, B supplying the scaffolding and timber necessary for the work. B refuses to furnish any scaffolding or timber and the work cannot be executed. A need not execute the work, and B is bound to make compensation to A for any loss caused to him by the non-performance of the contract.

(c) A contracts with B to deliver to him, at a specified price, certain merchandise on board a ship which cannot arrive for a month, and B engages to pay for the merchandise within a week from the date of the contract. B does not pay within the week. A's promise to deliver need not be performed, and B must make compensation.

(d) A promises B to sell him one hundred bales of merchandise, to be delivered next day, and B promises A to pay for them within a month. A does not deliver according to his promise. B's promise to pay need not be performed, and A must make compensation.

Effect of failure to perform at fixed time in contract in which time is essential

55 When a party to a contract promises to do a certain thing at or before a specified time or certain things at or before specified times, and fails to do any such thing at or before the specified time the contract or so much of it as has not been performed becomes voidable at the option of the promisee if the intention of the parties was that time should be of the essence of the contract.

Effect of such failure when time is not essential

If it was not the intention of the parties that time should be of the essence of the contract, the contract does not become voidable by the failure to do such thing at or before the specified time, but the promisee is entitled to compensation from the promisor for any loss occasioned to him by such failure.

Effect of acceptance of performance at time other than that agreed upon

If, in case of a contract voidable on account of the promisor's failure to perform his promise at the time agreed, the promisee accepts performance of such promise at any time other than that agreed, the promisee cannot claim compensation for any loss occasioned by the non-performance of the promise at the time agreed, unless, at the time of such acceptance he gives notice to the promisor of his intention to do so.¹

Agreement to do impossible act

56 An agreement to do an act impossible in itself is void.

¹ Compare ss 62 and 63, *infra*.

(Chapter IV —Of the Performance of Contracts)

A contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful ¹

Contract to do act afterwards becoming impossible or unlawful

Where one person has promised to do something which he knew, or, with reasonable diligence, might have known, and which the promisee did not know to be impossible or unlawful, such promisor must make compensation to such promisee for any loss which such promisee sustains through the non performance of the promise

Compensation for loss through non performance of act known to be impossible or unlawful

Illustrations

(a) A agrees with B to discover treasure by magic The agreement is void

(b) A and B contract to marry each other Before the time fixed for the marriage, A goes mad The contract becomes void

(c) A contracts to marry B, being already married to C and being forbidden by the law to which he is subject to practise polygamy A must make compensation to B for the loss caused to her by the non performance of his promise

(d) A contracts to take in cargo for B at a foreign port A's Government afterwards declares war against the country in which the port is situated The contract becomes void when war is declared

(e) A contracts to act at a theatre for six months in consideration of a sum paid in advance by B On several occasions A is too ill to act The contract to act on those occasions becomes void

57 Where persons reciprocally promise, firstly, to do certain things which are legal, and, secondly, under specified circumstances, to do certain other things which are illegal, the first set of promises is a contract, but the second is a void agreement

Reciprocal promise to do things legal, and also other things illegal

Illustration

A and B agree that A shall sell B a house for 10 000 rupees, but that, if B uses it as a gambling house, he shall pay A 50 000 rupees for it

The first set of reciprocal promises, namely to sell the house and to pay 10 000 rupees for it, is a contract

The second set is for an unlawful object, namely, that B may use the house as a gambling house and is a void agreement

58 In the case of an alternative promise, one branch of which is legal and the other illegal, the legal branch alone can be enforced

Alternative promise, one branch being illegal

Illustration

A and B agree that A shall pay B 1,000 rupees for which B shall afterwards deliver to A either rice or smuggled opium

This is a valid contract to deliver rice, and a void agreement as to the opium

Appropriation of Payments

59 Where a debtor, owing several distinct debts to one person, makes a payment to him, either with express intimation, or under

Appropriation of payment where debt

(Chapter IV —Of the Performance of Contracts)

to be discharged is indicated

circumstances implying that the payment is to be applied to the discharge of some particular debt, the payment, if accepted, must be applied accordingly

Illustrations

(a) A owes B among other debts, 1 000 rupees upon a promissory note which falls due on the first June. He owes B no other debt of that amount. On the first June A pays to B 1 000 rupees. The payment is to be applied to the discharge of the promissory note.

(b) A owes to B, among other debts the sum of 567 rupees. B writes to A and demands payment of this sum. A sends to B 567 rupees. This payment is to be applied to the discharge of the debt of which B had demanded payment.

Application of payment where debt to be discharged is not indicated

60 Where the debtor has omitted to intimate and there are no other circumstances indicating to which debt the payment is to be applied, the creditor may apply it at his discretion to any lawful debt actually due and payable to him from the debtor, whether its recovery is or is not barred by the law in force for the time being as to the limitation of suits.

Application of payment where neither party appropriates

61 Where neither party makes any appropriation the payment shall be applied in discharge of the debts in order of time, whether they are or are not barred by the law in force for the time being as to the limitation of suits. If the debts are of equal standing the payment shall be applied in discharge of each proportionably.

Contracts which need not be performed

Effect of novation rescission and alteration of contract

62 If the parties to a contract agree to substitute a new contract for it or to rescind or alter it, the original contract need not be performed.

Illustrations

(a) A owes money to B under a contract. It is agreed between A, B and C that B shall thenceforth accept C as his debtor instead of A. The old debt of A to B is at an end and a new debt from C to B has been contracted.

(b) A owes B 10 000 rupees. A enters into an arrangement with B and gives B a mortgage of his (A's) estate for 5 000 rupees in place of the debt of 10 000 rupees. This is a new contract and extinguishes the old.

(c) A owes B 1 000 rupees under a contract. B owes C 1 000 rupees. B orders A to credit C with 1 000 rupees in his books but C does not assent to the arrangement. B still owes C 1 000 rupees and no new contract has been entered into.

Promisee may dispense with or remit performance of promise

63 Every promisee may dispense with or remit, wholly or in part, the performance of the promise made to him or may extend the time for such performance,¹ or may accept instead of it any satisfaction which he thinks fit.

¹ But see s. 135, *infra*.

(Chapter II —Of the Performance of Contracts)

Illustrations

(a) A promises to paint a picture for B. B afterwards forbids him to do so. A is no longer bound to perform the promise.

(b) A owes B 5000 rupees. A pays to B and B accepts in satisfaction of the whole debt, 2000 rupees paid at the time and place at which the 5000 rupees were payable. The whole debt is discharged.

(c) A owes B 5000 rupees. C pays to B 1000 rupees and B accepts them, in satisfaction of his claim on A. This payment is a discharge of the whole claim.¹

(d) A owes B, under a contract, a sum of money, the amount of which has not been ascertained. A, without ascertaining the amount, gives to B and B in satisfaction thereof accepts the sum of 2000 rupees. This is a discharge of the whole debt whatever may be its amount.

(e) A owes B 2000 rupees and is also indebted to other creditors. A makes an arrangement with his creditors including B to pay them a ²[composition] of eight annas in the rupee upon their respective demand. Payment to B of 1,000 rupees is a discharge of B's demand.

64 When a person at whose option a contract is voidable rescinds it, the other party thereto need not perform any promise therein contained in which he is promisee. The party rescinding a voidable contract shall if he have received any benefit thereunder from another party to such contract restore such benefit so far as may be to the person from whom it was received.³

Consequences of rescission of voidable contract

65 When an agreement is discovered to be void or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it or to make compensation for it to the person from whom he received it.⁴

Obligation of person who has received advantage under void agreement or contract that becomes void

Illustrations

(a) A pays B 1000 rupees in consideration of B's promising to marry C, A's daughter. C is dead at the time of the promise. The agreement is void, but B must repay A the 1000 rupees.

(b) A contracts with B to deliver to him 250 maunds of rice before the first of May. A delivers 130 maunds only before that day and none after. B retains the 130 maunds after the first of May. He is bound to pay A for them.

(c) A a singer contracts with B the manager of a theatre, to sing at B's theatre for two nights in every week during the next two months and B engages to pay her a hundred rupees for each night's performance. On the sixth night A wilfully absents herself from the theatre and B in consequence rescinds the contract. B must pay A for the five nights on which she had sung.

(d) A contracts to sing for B at a concert for 1000 rupees which are paid in advance. A is too ill to sing. A is not bound to make compensation to B for the loss of the profits which B would have made if A had been able to sing but must refund to B the 1000 rupees paid in advance.

¹ See s. 41 *supra*.

² Subs. by s. 2 and Sch. II of the Amending Act 1891 (12 of 1891) for "composition".

³ See s. 75 *infra*.

(Chapter IV —Of the Performance of Contracts Chapter V —Of certain Relations resembling those created by Contract)

* Mode of communicating or revoking rescission of voidable contract

66 The rescission of a voidable contract may be communicated or revoked in the same manner, and subject to the same rules, as apply to the communication or revocation of a proposal¹

Effect of neglect of promisee to afford promisor reasonable facilities for performance

67 If any promisee neglects or refuses to afford the promisor reasonable facilities for the performance of his promise, the promisor is excused by such neglect or refusal as to any non performance caused thereby

Illustration

A contracts with B to repair B's house
B neglects or refuses to point out to A the places in which his house requires repair
A is excused for the non performance of the contract if it is caused by such neglect or refusal

CHAPTER V

OF CERTAIN RELATIONS RESEMBLING THOSE CREATED BY CONTRACT

Claim for necessities supplied to person incapable of contracting or on his account

63 If a person, incapable of entering into a contract, or any one whom he is legally bound to support is supplied by another person with necessities suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person²

Illustrations

(a) A supplies B a lunatic with necessities suitable to his condition in life A is entitled to be reimbursed from B's property
(b) A supplies the wife and children of B, a lunatic, with necessities suitable to their condition in life A is entitled to be reimbursed from B's property

Reimbursement of person paying money due by another in payment of which he is interested

69 A person who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by the other

Illustration

B holds land in Bengal on a lease granted by A the zamindar. The revenue payable by A to the Government being in arrear, his land is advertised for sale by the Government. Under the revenue law, the consequence of such sale will be the annulment of B's lease. B, to prevent the sale and the consequent annulment of his own lease, pays to the Government the sum due from A. A is bound to make good to B the amount so paid

¹ See ss 3 and 5, *supra*

² The property of a Government ward in the C. P. is not liable under this section see the C. P. Court of Wards Act, 1899 (24 of 1899), s 31 (1)

(Chapter V —Of certain Relations resembling those created by Contract
Chapter VI —Of the Consequences of Breach of Contract)

70 Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of or to restore the thing so done or delivered ¹

Obligation of person enjoying benefit of non gratuitous act

Illustrations

(a) A a tradesman leaves goods at B's house by mistake B treats the goods as his own He is bound to pay A for them

(b) A saves B's property from fire A is not entitled to compensation from B, if the circumstances show that he intended to act gratuitously

71 A person who finds goods belonging to another and takes them into his custody is subject to the same responsibility as a bailee ²

Responsibility of finder of goods

72. A person to whom money has been paid or anything delivered, by mistake or under coercion must repay or return it

Liability of person to whom money is paid or thing delivered by mistake or under coercion

Illustration

(a) A and B jointly owe 100 rupees to C A alone pays the amount to C and B not knowing this fact pays 100 rupees over again to C C is bound to repay the amount to B

(b) A railway company refuses to deliver up certain goods to the consignee except upon the payment of an illegal charge for carriage The consignee pays the sum charged in order to obtain the goods He is entitled to recover so much of the charge as was illegally excessive

CHAPTER VI

OF THE CONSEQUENCES OF BREACH OF CONTRACT

73 When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it

Compensation for loss or damage caused by breach of contract

Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach

When an obligation resembling those created by contract has been incurred and has not been discharged, any person injured by the failure to discharge it is entitled to receive the same compensation from the

Compensation for failure to discharge obligation

¹ As to suits by minors under s. 70 in Presidency Small Cause Courts, see the Presidency Small Cause Courts Act, 1882 (15 of 1882) s. 32.

² See ss. 151 and 152 *infra*

(Chapter VI —Of the Consequences of Breach of Contract)

resembling
those
created by
contract

party in default, as if such person had contracted to discharge it and had broken his contract

Explanation—In estimating the loss or damage arising from a breach of contract the means which existed of remedying the inconvenience caused by the non performance of the contract must be taken into account

Illustrations

(a) A contracts to sell and deliver 50 maunds of saltpetre to B, at a certain price to be paid on delivery. A breaks his promise. B is entitled to receive from A, by way of compensation the sum, if any, by which the contract price falls short of the price for which B might have obtained 50 maunds of saltpetre of like quality at the time when the saltpetre ought to have been delivered

(b) A hires B's ship to go to Bombay and there take on board, on the first of January a cargo which A is to provide and to bring it to Calcutta the freight to be paid when earned. B's ship does not go to Bombay, but A has opportunities of procuring suitable conveyance for the cargo upon terms as advantageous as those on which he had chartered the ship. A avails himself of those opportunities, but is put to trouble and expense in doing so. A is entitled to receive compensation from B in respect of such trouble and expense

(c) A contracts to buy of B, at a stated price, 50 maunds of rice no time being fixed for delivery. A afterwards informs B that he will not accept the rice if tendered to him. B is entitled to receive from A by way of compensation, the amount if any by which the contract price exceeds that which B can obtain for the rice at the time when A informs B that he will not accept it

(d) A contracts to buy B's ship for 60 000 rupees but breaks his promise. A must pay to B by way of compensation the excess if any, of the contract price over the price which B can obtain for the ship at the time of the breach of promise

(e) A the owner of a boat contracts with B to take a cargo of jute to Mirzapur, for sale at that place starting on a specified day. The boat owing to some avoidable cause does not start at the time appointed whereby the arrival of the cargo at Mirzapur is delayed beyond the time when it would have arrived if the boat had sailed according to the contract. After that date, and before the arrival of the cargo, the price of jute falls. The measure of the compensation payable to B by A is the difference between the price which B could have obtained for the cargo at Mirzapur at the time when it would have arrived if forwarded in due course, and its market price at the time when it actually arrived

(f) A contracts to repair B's house in a certain manner, and receives payment in advance. A repairs the house but not according to contract. B is entitled to recover from A the cost of making the repairs conform to the contract

(g) A contracts to let his ship to B for a year from the first of January, for a certain price. Freight rises and, on the first of January, the hire obtainable for the ship is higher than the contract price. A breaks his promise. He must pay to B, by way of compensation a sum equal to the difference between the contract price and the price for which B could hire a similar ship for a year on and from the first of January

(h) A contracts to supply B with a certain quantity of iron at a fixed price being a higher price than that for which A could procure and deliver the iron. B wrongfully refuses to receive the iron. B must pay to A, by way of compensation the difference between the contract price of the iron and the sum for which A could have obtained and delivered it

(i) A delivers to B, a common carrier, a machine, to be conveyed, without delay, to A's mill informing B that his mill is stopped for want of the machine. B unreasonably delays the delivery of the machine, and A, in consequence loses a profitable contract with the Government. A is entitled to receive from B, by way of compensation the average amount of profit which would have been made by the

(Chapter VI —Of the Consequences of Breach of Contract)

working of the mill during the time that delivery of it was delayed, but not the loss sustained through the loss of the Government contract

(1) A, having contracted with B to supply B with 1,000 tons of iron at 10½ rupees a ton, to be delivered at a stated time contracts with C for the purchase of 1,000 tons of iron at 8½ rupees a ton, telling C that he does so for the purpose of performing his contract with B. C fails to perform his contract with A who cannot procure other iron, and B in consequence, rescinds the contract. C must pay to A 20,000 rupees, being the profit which A would have made by the performance of his contract with B.

(2) A contracts with B to make and deliver to B, by a fixed day, for a specified price, a certain piece of machinery. A does not deliver the piece of machinery at the time specified and, in consequence of this B is obliged to procure another at a higher price than that which he was to have paid to A and is prevented from performing a contract which B had made with a third person at the time of his contract with A (but which had not been then communicated to A) and is compelled to make compensation for breach of that contract. A must pay to B, by way of compensation, the difference between the contract price of the piece of machinery and the sum paid by B for another, but not the sum paid by B to the third person by way of compensation.

(3) A, a builder, contracts to erect and finish a house by the first of January, in order that B may give possession of it at that time to C to whom B has contracted to let it. A is informed of the contract between B and C. A builds the house so badly that, before the first of January it falls down and has to be rebuilt by B who, in consequence, loses the rent which he was to have received from C, and is obliged to make compensation to C for the breach of his contract. A must make compensation to B for the cost of rebuilding the house for the rent lost and for the compensation made to C.

(4) A sells certain merchandise to B, warranting it to be of a particular quality, and B in reliance upon this warranty sells it to C with a similar warranty. The goods prove to be not according to the warranty and B becomes liable to pay C a sum of money by way of compensation. B is entitled to be reimbursed this sum by A.

(5) A contracts to pay a sum of money to B on a day specified. A does not pay the money on that day. B in consequence of not receiving the money on that day, is unable to pay his debts and is totally ruined. A is not liable to make good to B anything except the principal sum he contracted to pay, together with interest up to the day of payment.

(6) A contracts to deliver 50 maunds of saltpetre to B on the first of January, at a certain price. B afterwards, before the first of January contracts to sell the saltpetre to C at a price higher than the market price of the first of January. A breaks his promise. In estimating the compensation payable by A to B the market price of the first of January and not the profit which would have arisen to B from the sale to C, is to be taken into account.

(7) A contracts to sell and deliver 500 bales of cotton to B on a fixed day. A knows nothing of B's mode of conducting his business. A breaks his promise and B having no cotton is obliged to close his mill. A is not responsible to B for the loss caused to B by the closing of the mill.

(8) A contracts to sell and deliver to B on the first of January, certain cloth which B intends to manufacture into caps of a particular kind for which there is no demand except at that season. The cloth is not delivered till after the appointed time and too late to be used that year in making caps. B is entitled to receive from A by way of compensation the difference between the contract price of the cloth and its market price at the time of delivery but not the profits which he expected to obtain by making caps, nor the expenses which he has been put to in making preparation for the manufacture.

(9) A shipowner contracts with B to convey him from Calcutta to Sydney in A's ship sailing on the first of January, and B pays to A by way of deposit, one-half of his passage-money. The ship does not sail on the first of January and B, after being in consequence detained in Calcutta for some time and thereby put

(Chapter VI —Of the Consequences of Breach of Contract)

to some expense proceeds to Sydney in another vessel, and in consequence arriving too late in Sydney, loses a sum of money. A is liable to repay to B his deposit, with interest and the expense to which he is put by his detention in Calcutta and the excess if any of the passage money paid for the second ship over that agreed upon for the first, but not the sum of money which B lost by arriving in Sydney too late.

Compensation for breach of contract where penalty stipulated for

74 1[When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty the party complaining of the breach is entitled whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or as the case may be, the penalty stipulated for]

Explanation —A stipulation for increased interest from the date of default may be a stipulation by way of penalty.]

Exception —When any person enters into any bond, recognizance or other instrument of the same nature or under the provisions of any law or under the orders of the 2[Central Government] or of any 3[Provincial Government], gives any bond for the performance of any public duty or act in which the public are interested, he shall be liable, upon breach of the condition of any such instrument to pay the whole sum mentioned therein.

Explanation —A person who enters into a contract with Government does not necessarily thereby undertake any public duty or promise to do an act in which the public are interested.

Illustrations

(a) A contracts with B to pay B Rs. 1 000 if he fails to pay B Rs. 500 on a given day. A fails to pay B Rs. 500 on that day. B is entitled to recover from A such compensation not exceeding Rs. 1 000 as the Court considers reasonable.

(b) A contracts with B that if A practises as a surgeon within Calcutta he will pay B Rs. 5 000. A practises as a surgeon in Calcutta. B is entitled to such compensation not exceeding Rs. 5 000 as the Court considers reasonable.

(c) A gives a recognizance binding him in a penalty of Rs. 500 to appear in Court on a certain day. He forfeits his recognizance. He is liable to pay the whole penalty.

4 [(d) A gives B a bond for the repayment of Rs. 1 000 with interest at 12 per cent at the end of six months with a stipulation that in case of default interest shall be payable at the rate of 75 per cent from the date of default. This is a stipulation by way of penalty and B is only entitled to recover from A such compensation as the Court considers reasonable.]

1 Subs. by s. 4 of the Indian Contract Act Amendment Act 1899 (6 of 1899), for the first part of s. 74.

2 Subs. by the A. O. for 'G. of I.

3 Subs. by the A. O. for 'L. G.

4 Ins. by s. 4 (2) of the Indian Contract Act Amendment Act 1899 (6 of 1899).

(Chapter VI—Of the Consequences of Breach of Contract Chapter VII—Sale of Goods Chapter VIII—Of Indemnity and Guarantee)

¹[(e) A, who owes money to B a money lender undertakes to repay him by delivering to him 10 maunds of grain on a certain date and stipulates that, in the event of his not delivering the stipulated amount by the stipulated date he shall be liable to deliver 20 maunds This is a stipulation by way of penalty, and B is only entitled to reasonable compensation in case of breach]

²[(f) A undertakes to repay B a loan of Rs 1000 by five equal monthly instalments with a stipulation that, in default of payment of any instalment the whole shall become due This stipulation is not by way of penalty and the contract may be enforced according to its terms]

³[(g) A borrows Rs 100 from B and gives him a bond for Rs 200 payable by five yearly instalments of Rs 40 with a stipulation that in default of payment of any instalment the whole shall become due This is a stipulation by way of penalty]

75 A person who rightly rescinds a contract is entitled to compensation for any damage which he has sustained through the non fulfilment of the contract

Party right-fully rescinding contract entitled to compensation

Illustration

A a singer contracts with B the manager of a theatre to sing at his theatre for two nights in every week during the next two months and B engages to pay her 100 rupees for each night's performance On the sixth night A wilfully absents herself from the theatre and B in consequence rescinds the contract B is entitled to claim compensation for the damage which he has sustained through the non fulfilment of the contract

CHAPTER VII—[Sale of Goods] Rep by the Indian Sale of Goods Act, 1930 (III of 1930), s 65

CHAPTER VIII

OF INDEMNITY AND GUARANTEE

124 A contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person, is called a "contract of indemnity"

Contract of indemnity defined

Illustration

A contracts to indemnify B against the consequences of any proceedings which C may take against B in respect of a certain sum of 200 rupees This is a contract of indemnity

125 The promisee in a contract of indemnity acting within the scope of his authority, is entitled to recover from the promisor—

Rights of indemnifier when sued

(1) all damages which he may be compelled to pay in any suit in respect of any matter to which the promise to indemnify applies.

(Chapter VIII —Of Indemnity and Guarantee)

(2) all costs which he may be compelled to pay in any such suit if, in bringing or defending it, he did not contravene the orders of the promisor, and acted as it would have been prudent for him to act in the absence of any contract of indemnity, or if the promisor authorized him to bring or defend the suit,

(3) all sums which he may have paid under the terms of any compromise of any such suit, if the compromise was not contrary to the orders of the promisor, and was one which it would have been prudent for the promisee to make in the absence of any contract of indemnity, or if the promisor authorized him to compromise the suit

"Contract of
guarantee",
surety,
principal
debtor
and
"creditor"

126 A 'contract of guarantee' is a contract to perform the promise, or discharge the liability of a third person in case of his default. The person who gives the guarantee is called the "surety" the person in respect of whose default the guarantee is given is called the "principal debtor" and the person to whom the guarantee is given is called the "creditor". A guarantee may be either oral or written.

Considera-
tion for
guarantee

127 Anything done or any promise made for the benefit of the principal debtor may be a sufficient consideration to the surety for giving the guarantee.

Illustrations

(a) B requests A to sell and deliver to him goods on credit. A agrees to do so provided C will guarantee the payment of the price of the goods. C promises to guarantee the payment in consideration of A's promise to deliver the goods. This is a sufficient consideration for C's promise.

(b) A sells and delivers goods to B. C afterwards requests A to forbear to sue B for the debt for a year, and promises that if he does so C will pay for them in default of payment by B. A agrees to forbear as requested. This is a sufficient consideration for C's promise.

(c) A sells and delivers goods to B. C afterwards without consideration agrees to pay for them in default of B. The agreement is void.

Surety's
liability

128 The liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract.

Illustration

A guarantees to B the payment of a bill of exchange by C, the acceptor. The bill is dishonoured by C. A is liable not only for the amount of the bill but also for any interest and charges which may have become due on it.

"Continuing
guarantee"

129 A guarantee which extends to a series of transactions is called a "continuing guarantee."

Illustrations

(a) A, in consideration that B will employ C in collecting the rent of B's zamindari, promises B to be responsible to the amount of 5000 rupees for the due collection and payment by C of those rents. This is a continuing guarantee.

(Chapter VIII—Of Indemnity and Guarantee)

(b) A guarantees payment to B a tea dealer to the amount of £100 for any tea he may from time to time supply to C. B supplies C with tea to above the value of £100 and C pays B for it. Afterwards B supplies C with tea to the value of £200. C fails to pay. The guarantee given by A was a continuing guarantee, and he is accordingly liable to B to the extent of £100.

(c) A guarantees payment to B of the price of five sacks of flour to be delivered by B to C and to be paid for in a month. B delivers five sacks to C. C pays for them. Afterwards B delivers four sacks to C which C does not pay for. The guarantee given by A was not a continuing guarantee and accordingly he is not liable for the price of the four sacks.

130 A continuing guarantee may at any time be revoked by the surety as to future transactions by notice to the creditor.

Revocation
of continuing
guarantee

Illustrations

(a) A in consideration of B's discounting at A's request bills of exchange for C, guarantees to B for twelve months the due payment of all such bills to the extent of 5000 rupees. B discounts bills for C to the extent of 2000 rupees. Afterwards at the end of three months A revokes the guarantee. This revocation discharges A from all liability to B for any subsequent discount. But A is liable to B for the 2000 rupees on default of C.

(b) A guarantees to B to the extent of 10000 rupees that C shall pay all the bills that B shall draw upon him. B draws upon C. C accepts the bill. A gives notice of revocation. C dishonours the bill at maturity. A is liable upon his guarantee.

131 The death of the surety operates in the absence of any contract to the contrary, as a revocation of a continuing guarantee, so far as regards future transactions.

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guarantee
by surety's
death

132 Where two persons contract with a third person to undertake a certain liability and also contract with each other that one of them shall be liable only on the default of the other, the third person not being a party to such contract, the liability of each of such two persons to the third person under the first contract is not affected by the existence of the second contract although such third person may have been aware of its existence.

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Illustration

A and B make a joint and several promissory note to C. A makes it in fact, as surety for B and C knows this at the time when the note is made. The fact that A, to the knowledge of C, made the note as surety for B is no answer to a suit by C against A upon the note.

133 Any variance, made without the surety's consent, in the terms of the contract between the principal [debtor] and the creditor, discharges the surety as to transactions subsequent to the variance.

Discharge
of surety
by variance
in terms of
contract

Illustration

(a) A becomes surety to C for B's conduct as a manager in C's bank. Afterwards B and C contract without A's consent that B's salary shall be raised, and

(Chapter VIII—Of Indemnity and Guarantee)

(2) all costs which he may be compelled to pay in any such suit if, in bringing or defending it, he did not contravene the orders of the promisor, and acted as it would have been prudent for him to act in the absence of any contract of indemnity, or if the promisor authorized him to bring or defend the suit,

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Discharge
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Illustrations

(a) A becomes surety to C for B's conduct as a manager in C's bank. Afterwards B and C contract without A's consent that B's salary shall be raised and

(Chapter VIII —Of Indemnity and Guarantee)

that he shall become liable for one fourth of the losses on overdrafts B allows a customer to overdraw, and the bank loses a sum of money A is discharged from his suretyship by the variance made without his consent, and is not liable to make good this loss

(b) A guarantees C against the misconduct of B in an office to which B is appointed by C, and of which the duties are defined by an Act of the Legislature By a subsequent Act, the nature of the office is materially altered Afterwards, B misconducts himself A is discharged by the change from future liability under his guarantee, though the misconduct of B is in respect of a duty not affected by the later Act

(c) C agrees to appoint B as his clerk to sell goods at a yearly salary, upon A's becoming surety to C for B's duly accounting for moneys received by him as such clerk Afterwards, without A's knowledge or consent, C and B agree that B should be paid by a commission on the goods sold by him and not by a fixed salary A is not liable for subsequent misconduct of B

(d) A gives to C a continuing guarantee to the extent of 3,000 rupees for any oil supplied by C to B on credit Afterwards B becomes embarrassed, and, without the knowledge of A, B and C contract that C shall continue to supply B with oil for ready money, and that the payments shall be applied to the then existing debts between B and C A is not liable on his guarantee for any goods supplied after this new arrangement

(e) C contracts to lend B 5,000 rupees on the 1st March A guarantees repayment C pays the 5,000 rupees to B on the 1st January A is discharged from his liability, as the contract has been varied inasmuch as C might sue B for the money before the 1st of March

Discharge of surety by release or discharge of principal debtor.

134 The surety is discharged by any contract between the creditor and the principal debtor, by which the principal debtor is released, or by any act or omission of the creditor, the legal consequence of which is the discharge of the principal debtor

Illustrations

(a) A gives a guarantee to C for goods to be supplied by C to B C supplies goods to B, and afterwards B becomes embarrassed and contracts with his creditors (including C) to assign to them his property in consideration of their releasing him from their demands Here B is released from his debt by the contract with C, and A is discharged from his suretyship

(b) A contracts with B to grow a crop of indigo on A's land and to deliver it to B at a fixed rate, and C guarantees A's performance of this contract B diverts a stream of water which is necessary for irrigation of A's land and thereby prevents him from raising the indigo C is no longer liable on his guarantee

(c) A contracts with B for a fixed price to build a house for B within a stipulated time, B supplying the necessary timber C guarantees A's performance of the contract B omits to supply the timber C is discharged from his suretyship

Discharge of surety when creditor compounds with, gives time to, or agrees not to sue, principal debtor.

135. A contract between the creditor and the principal debtor, by which the creditor makes a composition with, or promises to give time to, or not to sue, the principal debtor discharges the surety, unless the surety assents to such contract.

(Chapter VIII —Of Indemnity and Guarantee)

136 Where a contract to give time to the principal debtor is made by the creditor with a third person, and not with the principal debtor, the surety is not discharged

Surety not discharged when agreement made with third person to give time to principal debtor

Illustration

C, the holder of an overdue bill of exchange drawn by A as surety for B, and accepted by B, contracts with M to give time to B. A is not discharged

137 Mere forbearance on the part of the creditor to sue the principal debtor or to enforce any other remedy against him does not, in the absence of any provision in the guarantee to the contrary, discharge the surety

Creditor's forbearance to sue does not discharge surety

Illustration

B owes to C a debt guaranteed by A. The debt becomes payable. C does not sue B for a year after the debt has become payable. A is not discharged from his suretyship

138 Where there are co sureties, a release by the creditor of one of them does not discharge the others; neither does it free the surety so released from his responsibility to the other sureties¹

Release of one co surety does not discharge others

139 If the creditor does any act which is inconsistent with the rights of the surety, or omits to do any act which his duty to the surety requires him to do, and the eventual remedy of the surety himself against the principal debtor is thereby impaired, the surety is discharged

Discharge of surety by creditor's act or omission impairing surety's eventual remedy

Illustrations

(a) B contracts to build a ship for C for a given sum to be paid by instalments as the work reaches certain stages. A becomes surety to C for B's due performance of the contract. C, without the knowledge of A, prepays to B the last two instalments. A is discharged by this payment

(b) C lends money to B on the security of a joint and several promissory note made in C's favour by B and by A as surety for B, together with a bill of sale of B's furniture which gives power to C to sell the furniture and apply the proceeds in discharge of the note. Subsequently C sells the furniture but owing to his misconduct and wilful negligence only a small price is realized. A is discharged from liability on the note

(c) A puts M as apprentice to B and gives a guarantee to B for M's fidelity. B promises on his part that he will at least once a month see M make up the cash. B omits to see this done as promised and M embezzles. A is not liable to B on his guarantee

140 Where a guaranteed debt has become due, or default of the principal debtor to perform a guaranteed duty has taken place, the surety, upon payment or performance of all that he is liable for, is invested with all the rights which the creditor had against the principal debtor

Rights of surety on payment or performance

141 A surety is entitled to the benefit of every security which the creditor has against the principal debtor at the time when the contract

Surety's right to benefit of

(Chapter VIII—Of Indemnity and Guarantee)

creditor's
securities

of suretyship is entered into, whether the surety knows of the existence of such security or not, and, if the creditor loses, or, without the consent of the surety, parts with such security, the surety is discharged to the extent of the value of the security

Illustrations

(a) C advances to B his tenant 2000 rupees on the guarantee of A. C has also a further security for the 2000 rupees by a mortgage of B's furniture. C cancels the mortgage. B becomes insolvent, and C sues A on his guarantee. A is discharged from liability to the amount of the value of the furniture.

(b) C a creditor whose advance to B is secured by a decree receives also a guarantee for that advance from A. C afterwards takes B's goods in execution under the decree and then without the knowledge of A withdraws the execution. A is discharged.

(c) A, as surety for B makes a bond jointly with T to C, to secure a loan from C to B. Afterwards C obtains from B a further security for the same debt. Subsequently C gives up the further security. A is not discharged.

Guarantee
obtained by
misrepresentation
invalid
Guarantee
obtained by
concealment
invalid

142 Any guarantee which has been obtained by means of misrepresentation made by the creditor, or with his knowledge and assent, concerning a material part of the transaction, is invalid.

143 Any guarantee which the creditor has obtained by means of keeping silence as to material circumstances is invalid.

Illustrations

(a) A engages B as clerk to collect money for him. B fails to account for some of his receipts and A in consequence calls upon him to furnish security for his duly accounting. C gives his guarantee for B's duly accounting. A does not acquaint C with B's previous conduct. B afterwards makes default. The guarantee is invalid.

(b) A guarantees to C payment for iron to be supplied by him to B to the amount of 2000 tons. B and C have privately agreed that B should pay five rupees per ton beyond the market price, such excess to be applied in liquidation of an old debt. This agreement is concealed from A. A is not liable as a surety.

Guarantee
on contract
that creditor
shall not act
on it until
co-surety
joins
Implied
promise to
indemnify
surety

144 Where a person gives a guarantee upon a contract that the creditor shall not act upon it until another person has joined in it as co-surety, the guarantee is not valid if that other person does not join.

145 In every contract of guarantee there is an implied promise by the principal debtor to indemnify the surety, and the surety is entitled to recover from the principal debtor whatever sum he has rightfully paid under the guarantee, but no sums which he has paid wrongfully.

Illustrations

(a) B is indebted to C, and A is surety for the debt. C demands payment from A and on his refusal sues him for the amount. A defends the suit having reasonable grounds for doing so but is compelled to pay the amount of the debt with costs. He can recover from B the amount paid by him for costs as well as the principal debt.

(b) C lends B a sum of money, and A, at the request of B, accepts a bill of exchange drawn by B upon A to secure the amount. C the holder of the bill demands payment of it from A and, on A's refusal to pay, sues him upon the bill. A not having reasonable grounds for so doing defends the suit and has to pay the amount of the bill and costs. He can recover from B the amount of the bill, but not the sum paid for costs as there was no real ground for defending the action.

(Chapter VIII—Of Indemnity and Guarantee Chapter IX—Of Bailment)

(c) A guarantees to C to the extent of 2000 rupees, payment for rice to be supplied by C to B. C supplies to B rice to a less amount than 2000 rupees but obtains from A payment of the sum of 2000 rupees in respect of the rice supplied. A can not recover from B more than the price of the rice actually supplied.

*146 Where two or more persons are co sureties for the same debt or duty, either jointly or severally and whether under the same or different contracts and whether with or without the knowledge of each other the co sureties in the absence of any contract to the contrary, are liable as between themselves to pay each an equal share of the whole debt or of that part of it which remains unpaid by the principal debtor¹.

Co sureties
liable to
contribute
equally

Illustrations

(a) A, B and C are sureties to D for the sum of 3000 rupees lent to E. E makes default in payment. A, B and C are liable as between themselves to pay 1000 rupees each.

(b) A, B and C are sureties to D for the sum of 1000 rupees lent to E and there is a contract between A, B and C that A is to be responsible to the extent of one quarter, B to the extent of one-quarter and C to the extent of one half. E makes default in payment. As between the sureties A is liable to pay 250 rupees, B 250 rupees and C 500 rupees.

*147 Co sureties who are bound in different sums are liable to pay equally as far as the limits of their respective obligations permit.

Liability of
co sureties
bound in
different
sums

Illustrations

(a) A, B and C as sureties for D enter into three several bonds each in a different penalty, namely A in the penalty of 10000 rupees, B in that of 20000 rupees, C in that of 40000 rupees conditioned for D's duly accounting to F. D makes default to the extent of 30000 rupees. A, B and C are each liable to pay 10000 rupees.

(b) A, B and C as sureties for D enter into three several bonds each in a different penalty, namely A in the penalty of 10000 rupees, B in that of 20000 rupees, C in that of 40000 rupees conditioned for D's duly accounting to F. D makes default to the extent of 40000 rupees. A is liable to pay 10000 rupees and B and C 15000 rupees each.

(c) A, B and C as sureties for D enter into three several bonds each in a different penalty, namely A in the penalty of 10000 rupees, B in that of 20000 rupees, C in that of 40000 rupees conditioned for D's duly accounting to F. D makes default to the extent of 70000 rupees. A, B and C have to pay each the full penalty of his bond.

CHAPTER IV

OF BAILMENT

*148 A "bailment" is the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them. The person delivering the goods is called the "bailor." The person to whom they are delivered is called the "bailee."

¹ See s. 43 *supra*.

(Chapter IX —Of Bailment)

Explanation —If a person already in possession of the goods of another contracts to hold them as a bailee, he thereby becomes the bailee, and the owner becomes the bailor, of such goods although they may not have been delivered by way of bailment

149 The delivery to the bailee may be made by doing anything which has the effect of putting the goods in the possession of the intended bailee or of any person authorized to hold them on his behalf

150 The bailor is bound to disclose to the bailee faults in the goods bailed of which the bailor is aware, and which materially interfere with the use of them, or expose the bailee to extraordinary risks, and if he does not make such disclosure, he is responsible for damage arising to the bailee directly from such faults

If the goods are bailed for hire, the bailor is responsible for such damage whether he was or was not aware of the existence of such faults in the goods bailed

Illustrations

(a) A lends a horse which he knows to be vicious to B. He does not disclose the fact that the horse is vicious. The horse runs away. B is thrown and injured. A is responsible to B for damage sustained.

(b) A hires a carriage of B. The carriage is unsafe though B is not aware of it and A is injured. B is responsible to A for the injury.

151 In all cases of bailment the bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would, under similar circumstances take of his own goods of the same bulk, quality and value as the goods bailed²

152 The bailee, in the absence of any special contract is not responsible for the loss, destruction or deterioration of the thing bailed, if he has taken the amount of care of it described in section 151

153 A contract of bailment is avoidable at the option of the bailor, if the bailee does any act with regard to the goods bailed, inconsistent with the conditions of the bailment

Illustration

A lets to B for hire, a horse for his own riding. B drives the horse in his carriage. This is at the option of A a termination of the bailment

154 If the bailee makes any use of the goods bailed, which is not according to the conditions of the bailment, he is liable to make com-

¹ The responsibility of the Trustees of the Port of Madras constituted under the Madras Port Trust Act 1905 (Mad 2 of 1905) in regard to goods has been declared to be that of a bailee, under these sections without the qualifying words 'in the absence of any special contract' in s 152 see s 40 (1) of that Act

² As to railway contracts see the Indian Railways Act 1890 (9 of 1890) s 72. As to the liability of common carriers see s 3 of the Carriers Act, 1865 (3 of 1865)

Delivery to
bailee how
made

Bailor's
duty to
disclose
faults in
goods
bailed

Care to be
taken by
bailee

Bailee when
not liable
for loss etc,
of thing
bailed

Termination
of bailment
by bailor's
act in con-
sistent
with
conditions

Liability of
bailee

(Chapter IX —Of Bailment)

compensation to the bailor for any damage arising to the goods from or during such use of them

making an authorised use of goods bailed

Illustrations

(a) A lends a horse to B for his own riding only. B allows C, a member of his family to ride the horse. C rides with care but the horse accidentally falls and is injured. B is liable to make compensation to A for the injury done to the horse.

(b) A hires a horse in Calcutta from B expressly to march to Benares. A rides with due care but marches to Cattack instead. The horse accidentally falls and is injured. A is liable to make compensation to B for the injury to the horse.

155 If the bailee, with the consent of the bailor, mixes the goods of the bailor with his own goods, the bailor and the bailee shall have an interest, in proportion to their respective shares, in the mixture thus produced.

Effect of mixture with bailor's consent, of his goods with bailee's

156 If the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods, and the goods can be separated or divided, the property in the goods remains in the parties respectively, but the bailee is bound to bear the expense of separation or division and any damage arising from the mixture.

Effect of mixture without bailor's consent, when the goods can be separated

Illustration

A lends 100 bales of cotton marked with a particular mark to B. B, without A's consent, mixes the 100 bales with other bales of his own, bearing a different mark. A is entitled to have his 100 bales returned, and B is bound to bear all the expense incurred in the separation of the bales and any other incidental damage.

157 If the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods, in such a manner that it is impossible to separate the goods bailed from the other goods and deliver them back, the bailor is entitled to be compensated by the bailee for the loss of the goods.

Effect of mixture, without bailor's consent, when the goods cannot be separated

Illustration

A lends a barrel of Cape flour worth Rs. 45 to B. B, without A's consent, mixes the flour with country flour of his own, worth only Rs. 25 a barrel. B must compensate A for the loss of his flour.

158 Where, by the conditions of the bailment, the goods are to be kept or to be carried, or to have work done upon them by the bailee for the bailor, and the bailee is to receive no remuneration, the bailor shall repay to the bailee the necessary expenses incurred by him for the purpose of the bailment.

Repayment by bailor of necessary expenses

159 The lender of a thing for use may at any time require its return, if the loan was gratuitous, even though he lent it for a specified time or purpose. But, if, on the faith of such loan made for a specified time or purpose, the borrower has acted in such a manner that the return of the thing lent before the time agreed upon would cause him loss exceeding the benefit actually derived by him from the loan,

Retention of goods lent gratuitously

(Chapter IX —Of Bailment)

the lender must, if he compels the return, indemnify the borrower for the amount in which the loss so occasioned exceeds the benefit so derived

Return of goods bailed on expiration of time or accomplishment of purpose

160 It is the duty of the bailee to return, or deliver according to the bailor's directions, the goods bailed, without demand, as soon as the time for which they were bailed has expired, or the purpose for which they were bailed has been accomplished

Bailee's responsibility when goods are not duly returned

161 If, by the default of the bailee, the goods are not returned delivered or tendered at the proper time, he is responsible to the bailor for any loss destruction or deterioration of the goods from that time²

Termination of gratuitous bailment by death Bailor entitled to increase or profit from goods bailed

162 A gratuitous bailment is terminated by the death either of the bailor or of the bailee

163 In the absence of any contract to the contrary, the bailee is bound to deliver to the bailor, or according to his directions, any increase or profit which may have accrued from the goods bailed

Illustration

A leaves a cow in the custody of B to be taken care of The cow has a calf B is bound to deliver the calf as well as the cow to A

Bailor's responsibility to bailee

164 The bailor is responsible to the bailee for any loss which the bailee may sustain by reason that the bailor was not entitled to make the bailment or to receive back the goods or to give directions, respecting them

Bailment by several joint owners

165 If several joint owners of goods bail them, the bailee may deliver them back to, or according to the directions of, one joint owner without the consent of all, in the absence of any agreement to the contrary

Bailee not responsible on redelivery to bailor without title Right of third person claiming goods bailed

166 If the bailor has no title to the goods, and the bailee, in good faith, delivers them back to, or according to the directions of, the bailor, the bailee is not responsible to the owner in respect of such delivery³

167 If a person, other than the bailor, claims goods bailed, he may apply to the Court to stop the delivery of the goods to the bailor, and to decide the title to the goods

¹ S. 161 has been declared to apply to the responsibility of the Trustees of the Port of Madras as to goods in their possession see the Madras Port Trust Act, 1905 (Mad. 2 of 1905)

² As to railway contracts see the Indian Railways Act 1890 (9 of 1890) s. 72

³ See s. 117 of the Indian Evidence Act, 1872 (1 of 1872)

(Chapter IX —Of Bailment)

168 The finder of goods has no right to sue the owner for compensation for trouble and expense voluntarily incurred by him to preserve the goods and to find out the owner, but he may retain the goods against the owner until he receives such compensation and, where the owner has offered a specific reward for the return of goods lost, the finder may sue for such reward, and may retain the goods until he receives it

Right of
finder of
goods,
may sue
for specific
reward
offered

169 When a thing which is commonly the subject of sale is lost the owner cannot with reasonable diligence be found or if he refuses upon demand to pay the lawful charges of the finder the finder may sell it—

When finder
of thing
commonly
on sale may
sell it

(1) when the thing is in danger of perishing or of losing the greater part of its value or

(2) when the lawful charges of the finder in respect of the thing found, amount to two thirds of its value

170 Where the bailee has in accordance with the purpose of the bailment, rendered any service involving the exercise of labour or skill in respect of the goods bailed he has in the absence of a contract to the contrary a right to retain such goods until he receives due remuneration for the services he has rendered in respect of them

Bailee a
particular
lien

Illustrations

(a) A delivers a rough diamond to B a jeweller to be cut and polished which is accordingly done B is entitled to retain the stone till he is paid for the service he has rendered

(b) A gives cloth to B a tailor, to make into a coat B promises A to deliver the coat as soon as it is finished and to give a three months credit for the price B is not entitled to retain the coat until he is paid

171 Bankers, factors wharfingers attorneys of a High Court and policy brokers may in the absence of a contract to the contrary, retain, as a security for a general balance of account any goods bailed to them, but no other persons have a right to retain as a security for such balance goods bailed to them unless there is an express contract to that effect¹

General
lien of
bankers,
factors
wharfingers
attorneys
and policy
brokers

Bailments of Pledges

172 The bailment of goods as security for payment of a debt or performance of a promise is called "pledge" The bailor is in this case called the "pawnor" The bailee is called the "pawnee"

"Pledge",
"pawnor"
and
"pawnee"
defined

173 The pawnee may retain the goods pledged, not only for payment of the debt or the performance of the promise but for the interest of the debt, and all necessary expenses incurred by him in respect of the possession or for the preservation of the goods pledged

Pawnee's
right of
retainer

¹ As to lien of an agent see s. 221, *infra* As to lien of a Railway Administration see the Indian Railways Act 1890 (9 of 1890) s. 55

(Chapter IX —Of Bailment)

Pawnee not to retain for debt or promise other than that for which goods pledged
 Presumption in case of subsequent advances

174 The pawnee shall not, in the absence of a contract to that effect retain the goods pledged for any debt or promise other than the debt or promise for which they are pledged, but such contract, in the absence of anything to the contrary, shall be presumed in regard to subsequent advances made by the pawnee

Pawnee's right as to extraordinary expenses incurred

175 The pawnee is entitled to receive from the pawnor extraordinary expenses incurred by him for the preservation of the goods pledged

Pawnee's right where pawnor makes default

176 If the pawnor makes default in payment of the debt, or performance at the stipulated time of the promise, in respect of which the goods were pledged the pawnee may bring a suit against the pawnor upon the debt or promise and retain the goods pledged as a collateral security or he may sell the thing pledged, on giving the pawnor reasonable notice of the sale

If the proceeds of such sale are less than the amount due in respect of the debt or promise the pawnor is still liable to pay the balance If the proceeds of the sale are greater than the amount so due, the pawnee shall pay over the surplus to the pawnor

Defaulting pawnor's right to redeem

177 If a time is stipulated for the payment of the debt or performance of the promise for which the pledge is made, and the pawnor makes default in payment of the debt or performance of the promise at the stipulated time, he may redeem the goods pledged at any subsequent time before the actual sale of them¹ but he must in that case, pay, in addition, any expenses which have arisen from his default

Pledge by mercantile agent

2[178 Where a mercantile agent is, with the consent of the owner, in possession of goods or the documents of title to goods, any pledge made by him, when acting in the ordinary course of business of a mercantile agent, shall be as valid as if he were expressly authorised by the owner of the goods to make the same, provided that the pawnee acts in good faith and has not at the time of the pledge notice that the pawnor has not authority to pledge

Explanation—In this section, the expressions 'mercantile agent' and 'documents of title' shall have the meanings assigned to them in the Indian Sale of Goods Act, 1930

¹ For limitation see the Indian Limitation Act 1908 (9 of 1908) Sch I No 145.

² Ss 173 and 178A were subs for the original s 178 by the Indian Contract (Amendment) Act, 1930 (4 of 1930), s 2

(Chapter IV —Of Bailment Chapter V —Agency)

178A When the pawnor has obtained possession of the goods pledged by him under a contract voidable under section 19 or section 19A, but the contract has not been rescinded at the time of the pledge the pawnee acquires a good title to the goods provided he acts in good faith and without notice of the pawnor's defect of title] Pledge by person in possession under voidable contract

179 Where a person pledges goods in which he has only a limited interest the pledge is valid to the extent of that interest Pledge where pawnor has only a limited interest

Suits by Bailees or Bailors against Wrong doers

180 If a third person wrongfully deprives the bailee of the use or possession of the goods bailed or does them any injury the bailee is entitled to use such remedies as the owner might have used in the like case if no bailment had been made and either the bailor or the bailee may bring a suit against a third person for such deprivation or injury Suit by bailor or bailee against wrong doer

181 Whatever is obtained by way of relief or compensation in any such suit shall as between the bailor and the bailee, be dealt with according to their respective interests Apportionment of relief or compensation obtained by such suits

CHAPTER V
AGENCY

Appointment and Authority of Agents

182 An agent is a person employed to do any act for another or to represent another in dealings with third persons. The person for whom such act is done or who is so represented is called the 'principal' Agent and principal defined

183 Any person who is of the age of majority according to the law to which he is subject and who is of sound mind may employ an agent Who may employ agent

184 As between the principal and third persons any person may become an agent but no person who is not of the age of majority and of sound mind can become an agent so as to be responsible to him jointly or according to the provisions in that behalf herein contained Who may be an agent

185 No consideration is necessary to create an agency Consideration necessary

186 The authority of an agent may be expressed or implied Agent's authority may be expressed or implied

See also s. 33 of the Indian Contract Act 1872. 16 of 1908. See also the Col. of Civil Procedure 1903 (Act 5 of 1903) Ch. I. Order III, rule 4

(Chapter X — Agency)

Definitions of express and implied authority 187. An authority is said to be express when it is given by words spoken or written. An authority is said to be implied when it is to be inferred from the circumstances of the case, and things spoken or written or the ordinary course of dealing may be accounted circumstances of the case.

Illustration

A owns a shop in Serampur, living himself in Calcutta and visiting the shop occasionally. The shop is managed by B and he is in the habit of ordering goods from C in the name of A for the purposes of the shop and of paying for them out of A's funds with A's knowledge. B has an implied authority from A to order goods from C in the name of A for the purposes of the shop.

Extent of agent's authority 188. An agent having an authority to do an act has authority to do every lawful thing which is necessary in order to do such act.

An agent having an authority to carry on a business has authority to do every lawful thing necessary for the purpose, or usually done in the course of conducting such business.

Illustrations

(a) A is employed by B residing in London to recover at Bombay a debt due to B. A may adopt any legal process necessary for the purpose of recovering the debt and may give a valid discharge for the same.

(b) A constitutes B his agent to carry on his business of a ship builder. B may purchase timber and other materials and hire workmen for the purposes of carrying on the business.

Agent's authority in an emergency 189. An agent has authority in an emergency, to do all such acts for the purpose of protecting his principal from loss as would be done by a person of ordinary prudence in his own case under similar circumstances.

Illustrations

(a) An agent for sale may have goods repaired if it be necessary.

(b) A consigns provisions to B at Calcutta with directions to send them immediately to C at Cuttack. B may sell the provisions at Calcutta if they will not bear the journey to Cuttack without spoiling.

Sub Agents

When agent cannot delegate 190. An agent cannot lawfully employ another to perform acts which he has expressly or impliedly undertaken to perform personally, unless by the ordinary custom of trade a sub agent may, or, from the nature of the agency, a sub agent must, be employed.

Sub agent defined 191. A sub agent is a person employed by, and acting under the control of the original agent in the business of the agency.

Representation of principal 192. Where a sub agent is properly appointed the principal is so far as regards third persons represented by the sub agent, and is

(Chapter X —Agency)

bound by and responsible for his acts, as if he were an agent originally appointed by the principal.

by sub agent properly appointed
Agent's responsibility for sub agent

The agent is responsible to the principal for the acts of the sub-agent.

Sub-agent's responsibility

The sub-agent is responsible for his acts to the agent, but not to the principal, except in case of fraud or wilful wrong

193 Where an agent, without having authority to do so, has appointed a person to act as a sub agent, the agent stands towards such person in the relation of a principal to an agent, and is responsible for his acts both to the principal and to third persons, the principal is not represented by or responsible for the acts of the person so employed, nor is that person responsible to the principal

Agent's responsibility for sub agent appointed without authority

194 Where an agent holding an express or implied authority to name another person to act for the principal in the business of the agency, has named another person accordingly such person is not a sub agent, but an agent of the principal for such part of the business of the agency as is entrusted to him

Relation between principal and person duly appointed by agent to act in business of agency

Illustrations

(a) A directs B, his solicitor to sell his estate by auction and to employ an auctioneer for the purpose B names C, an auctioneer to conduct the sale C is not a sub agent, but is A's agent for the conduct of the sale

(b) A authorises B a merchant in Calcutta to recover the moneys due to A from C & Co B instructs D, a solicitor, to take legal proceedings against C & Co for the recovery of the money D is not a sub agent, but is solicitor for A

195 In selecting such agent for his principal an agent is bound to exercise the same amount of discretion as a man of ordinary prudence would exercise in his own case, and, if he does this, he is not responsible to the principal for the acts or negligence of the agent so selected

Agent's duty in naming such person.

Illustrations

(a) A instructs B a merchant, to buy a ship for him B employs a ship surveyor of good reputation to choose a ship for A The surveyor makes the choice negligently and the ship turns out to be unseaworthy and is lost B is not, but the surveyor is, responsible to A.

(b) A consigns goods to B, a merchant for sale B in due course, employs an auctioneer in good credit to sell the goods of A, and allows the auctioneer to receive the proceeds of the sale The auctioneer afterwards becomes insolvent without having accounted for the proceeds B is not responsible to A for the proceeds

Ratification

196 Where acts are done by one person on behalf of another, but without his knowledge or authority, he may elect to ratify or to disown

person as to acts

(Chapter X — Agency)

done for him
without his
authority
Effect of
ratification

such acts If he ratify them, the same effects will follow as if they had been performed by his authority

Ratification
may be
expressed or
implied

197 Ratification may be expressed or may be implied in the conduct of the person on whose behalf the acts are done

Illustrations

(a) A without authority buys goods for B. Afterwards B sells them to C on his own account. B's conduct implies a ratification of the purchase made for him by A.

(b) A without B's authority lends B's money to C. Afterwards C accepts interest on the money from C. B's conduct implies a ratification of the loan.

Knowledge
requisite for
valid rati-
fication

198 No valid ratification can be made by a person whose knowledge of the facts of the case is materially defective

Effect of
ratifying an
authorized
act forming
part of a
transaction

199 A person ratifying any unauthorised act done on his behalf ratifies the whole of the transaction of which such act formed a part

Ratification
of an
authorized
act cannot
injure third
person

200 An act done by one person on behalf of another, without such other person's authority, which if done with authority, would have the effect of subjecting a third person to damages or of terminating any right or interest of a third person cannot by ratification be made to have such effect

Illustrations

(a) A not being authorized thereto by B demands on behalf of B the delivery of a chattel the property of B from C who is in possession of it. This demand cannot be ratified by B so as to make C liable for damages for his refusal to deliver.

(b) A holds a lease from B terminable on three months' notice. C an unauthorized person gives notice of termination to A. The notice cannot be ratified by B so as to be binding on A.

Revocation of Authority

Termination
of agency

201 An agency is terminated by the principal revoking his authority, or by the agent renouncing the business of the agency, or by the business of the agency being completed or by either the principal or agent dying or becoming of unsound mind or by the principal being adjudicated an insolvent under the provisions of any Act for the time being in force for the relief of insolvent debtors

Termination
of agency
where agent

202 Where the agent has himself an interest in the property which forms the subject matter of the agency, the agency cannot, in the

(Chapter X — Agency

absence of an express contract, be terminated to the prejudice of such interest has an interest in subject matter

Illustrations

(a) A gives authority to B to sell A's land and to pay himself out of the proceeds the debts due to him from A. A cannot revoke this authority nor can it be terminated by his insanity or death.

(b) A consigns 1000 bales of cotton to B who has made advances to him on such cotton and desires B to sell the cotton and to repay himself out of the price the amount of his own advances. A cannot revoke this authority nor is it terminated by his insanity or death.

203 The principal may, save as is otherwise provided by the last preceding section, revoke the authority given to his agent at any time before the authority has been exercised so as to bind the principal When principal may revoke agent's authority

204 The principal cannot revoke the authority given to his agent after the authority has been partly exercised so far as regards such acts and obligations as arise from acts already done in the agency Revocation where authority has been partly exercised

Illustrations

(a) A authorizes B to buy 1000 bales of cotton on account of A and to pay for it out of A's money remaining in B's hands. B buys 1000 bales of cotton in his own name so as to make himself personally liable for the price. A cannot revoke B's authority so far as regards payment for the cotton.

(b) A authorizes B to buy 1000 bales of cotton on account of A and to pay for it out of A's money remaining in B's hands. B buys 1000 bales of cotton in A's name and so as not to render himself personally liable for the price. A can revoke B's authority to pay for the cotton.

205 Where there is an express or implied contract that the agency should be continued for any period of time, the principal must make compensation to the agent, or the agent to the principal, as the case may be, for any previous revocation or renunciation of the agency without sufficient cause Compensation for revocation by principal or renunciation by agent

206 Reasonable notice must be given of such revocation or renunciation, otherwise the damage thereby resulting to the principal or the agent, as the case may be, must be made good to the one by the other.

207 Revocation and renunciation may be expressed or may be implied in the conduct of the principal or agent respectively.

Illustration

A empowers B to let A's house. Afterwards A lets it himself. This is an implied revocation of B's authority.

208 The termination of the authority of an agent does not, as regards the agent, take effect before it becomes known to him, or, so far as regards third persons, before it becomes known to them.

(Chapter X — Agency)

Illustrations

takes effect as to agent and as to third persons

(a) A directs B to sell goods for him and agrees to give B five per cent commission on the price fetched by the goods. A afterwards by letter, revokes B's authority. B after the letter is sent but before he receives it sells the goods for 100 rupees. The sale is binding on A and B is entitled to five rupees as his commission.

(b) A at Madras by letter directs B to sell for him some cotton lying in a warehouse in Bombay, and afterwards by letter, revokes his authority to sell, and directs B to send the cotton to Madras. B after receiving the second letter enters into a contract with C who knows of the first letter but not of the second for the sale to him of the cotton. C pays B the money with which B absconds. C's payment is good as against A.

(c) A directs B his agent to pay certain money to C. A dies and D takes out probate to his will. B after A's death but before learning of it pays the money to C. The payment is good as against D the executor.

209 When an agency is terminated by the principal dying or becoming of unsound mind the agent is bound to take, on behalf of the representatives of his late principal, all reasonable steps for the protection and preservation of the interests entrusted to him.

210 The termination of the authority of an agent causes the termination (subject to the rules herein contained regarding the termination of an agent's authority) of the authority of all sub agents appointed by him.

Agent's Duty to Principal

211 An agent is bound to conduct the business of his principal according to the directions given by the principal or in the absence of any such directions according to the custom which prevails in doing business of the same kind at the place where the agent conducts such business. When the agent acts otherwise if any loss be sustained, he must make it good to his principal and if any profit accrues he must account for it.

Illustrations

(a) A an agent engaged in carrying on for B a business in which it is the custom to invest from time to time at interest the moneys which may be in hand omits to make such investment. A must make good to B the interest usually obtained by such investments.

(b) B a broker in whose business it is not the custom to sell on credit sells goods of A on credit to C whose credit at the time was very high. C before payment becomes insolvent. B must make good the loss to A.

212 An agent is bound to conduct the business of the agency with as much skill as is generally possessed by persons engaged in similar business, unless the principal has notice of his want of skill. The agent is always bound to act with reasonable diligence and to use such skill as he possesses and to make compensation to his principal in respect of

Agent's duty on termination of agency by principal's death or insanity

Termination of sub agent's authority

Agent's duty in conducting principal's business

Skill and diligence required from agent

(Chapter X—Agency)

the direct consequences of his own neglect, want of skill or misconduct, but not in respect of loss or damage which are indirectly or remotely caused by such neglect, want of skill or misconduct

Illustrations

(a) A, a merchant in Calcutta has an agent, B, in London to whom a sum of money is paid on A's account, with orders to remit. B retains the money for a considerable time. A, in consequence of not receiving the money, becomes insolvent. B is liable for the money and interest from the day on which it ought to have been paid, according to the usual rate, and for any further direct loss—viz. e.g. by variation of rate of exchange—but not further.

(b) A, an agent for the sale of goods having authority to sell on credit, sells to B, on credit, without making the proper and usual enquiries as to the solvency of B. B, at the time of such sale, is insolvent. A must make compensation to his principal in respect of any loss thereby sustained.

(c) A, an insurance broker employed by B to effect an insurance on a ship, omits to see that the usual clauses are inserted in the policy. The ship is afterwards lost. In consequence of the omission of the clauses nothing can be recovered from the underwriters. A is bound to make good the loss to B.

(d) A, a merchant in England, directs B, his agent at Bombay who accepts the agency, to send him 100 bales of cotton by a certain ship. B having it in his power to send the cotton omits to do so. The ship arrives safely in England. Soon after her arrival the price of cotton rises. B is bound to make good to A the profit which he might have made by the 100 bales of cotton at the time the ship arrived but not any profit he might have made by the subsequent rise.

213 An agent is bound to render proper accounts to his principal on demand. Agent's accounts

214 It is the duty of an agent, in cases of difficulty, to use all reasonable diligence in communicating with his principal and in seeking to obtain his instructions. Agent's duty to communicate with principal

215 If an agent deals on his own account in the business of the agency, without first obtaining the consent of his principal and acquainting him with all material circumstances which have come to his own knowledge on the subject, the principal may repudiate the transaction if the case shows either that any material fact has been dishonestly concealed from him by the agent, or that the dealings of the agent have been disadvantageous to him. Right of principal when agent deals on his own account in business of agency without principal's consent

Illustrations

(a) A directs B to sell A's estate. B buys the estate for himself in the name of C. A, on discovering that B has bought the estate for himself, may repudiate the sale, if he can show that B has dishonestly concealed any material fact, or that the sale has been disadvantageous to him.

(b) A directs B to sell A's estate. B, on looking over the estate before selling it, finds a mine on the estate which is unknown to A. B informs A that he wishes to buy the estate for himself, but conceal the discovery of the mine. A allows B to buy in ignorance of the existence of the mine. A, on discovering that B knew of the mine at the time he bought the estate, may either repudiate or affirm the sale at his option.

(Chapter X — Agency.)

Principal's
right to
benefit
gained by
agent
dealing on
his own
account in
business of
agency

216. If an agent, without the knowledge of his principal, deals in the business of the agency on his own account instead of on account of his principal, the principal is entitled to claim from the agent any benefit which may have resulted to him from the transaction.

Illustration

A directs B, his agent, to buy a certain house for him. B tells A it cannot be bought, and buys the house for himself. A may, on discovering that B has bought the house, compel him to sell it to A at the price he gave for it.

Agent's
right of
retainer out
of sums
received on
principal's
account

217. An agent may retain, out of any sums received on account of the principal in the business of the agency, all moneys due to himself in respect of advances made or expenses properly incurred by him in conducting such business, and also such remuneration as may be payable to him for acting as agent.

Agent's
duty to pay
sums
received for
principal

218. Subject to such deductions, the agent is bound to pay to his principal all sums received on his account.

When
agent's re-
muneration
becomes
due

219. In the absence of any special contract, payment for the performance of any act is not due to the agent until the completion of such act; but an agent may detain moneys received by him on account of goods sold, although the whole of the goods consigned to him for sale may not have been sold, or although the sale may not be actually complete.

Agent not
entitled to
remunera-
tion for
business mis-
conducted

220. An agent who is guilty of misconduct in the business of the agency is not entitled to any remuneration in respect of that part of the business which he has misconducted.

Illustrations

(a) A employs B to recover 1,00,000 rupees from C, and to lay it out on good security. B recovers the 1,00,000 rupees and lays out 90,000 rupees on good security, but lays out 10,000 rupees on security which he ought to have known to be bad, whereby A loses 2,000 rupees. B is entitled to remuneration for recovering the 1,00,000 rupees and for investing the 90,000 rupees. He is not entitled to any remuneration for investing the 10,000 rupees, and he must make good the 2,000 rupees to B.

(b) A employs B to recover 1,000 rupees from C. Through B's misconduct the money is not recovered. B is entitled to no remuneration for his services, and must make good the loss.

Agent's lien
on princi-
pal's pro-
perty

221. In the absence of any contract to the contrary, an agent is entitled to retain goods, papers and other property, whether moveable or immoveable, of the principal received by him, until the amount due to himself for commission, disbursements and services in respect of the same has been paid or accounted for to him.

(Chapter X — Agency)

Principal's Duty to Agent.

222 The employer of an agent is bound to indemnify him against the consequences of all lawful acts done by such agent in exercise of the authority conferred upon him

Agent to be indemnified against consequences of lawful acts

Illustrations

(a) B, at Singapore under instructions from A of Calcutta contracts with C to deliver certain goods to him. A does not send the goods to B, and C sues B for breach of contract. B informs A of the suit and A authorizes him to defend the suit. B defends the suit and is compelled to pay damages and costs and incurs expenses. A is liable to B for such damages, costs and expenses.

(b) B a broker at Calcutta by the orders of A a merchant there, contracts with C for the purchase of 10 casks of oil for A. Afterwards A refuses to receive the oil and C sues B. B informs A who repudiates the contract altogether. B defends but unsuccessfully and has to pay damages and costs and incurs expenses. A is liable to B for such damages, costs and expenses.

223 Where one person employs another to do an act, and the agent does the act in good faith, the employer is liable to indemnify the agent against the consequences of that act, though it cause an injury to the rights of third persons.

Agent to be indemnified against consequences of acts done in good faith

Illustrations

(a) A a decree holder and entitled to execution of B's goods, requires the officer of the Court to seize certain goods representing them (i.e. the goods of B). The officer seizes the goods and is sued by C the true owner of the goods. A is liable to indemnify the officer for the sum which he is compelled to pay to C in consequence of obeying A's directions.

(b) B at the request of A sells goods in the possession of A but which A has no right to dispose of. B does not know this and hands over the proceeds of the sale to A. Afterwards C the true owner of the goods sues B and recovers the value of the goods and costs. A is liable to indemnify B for what he has been compelled to pay to C and for B's own expenses.

224 Where one person employs another to do an act which is criminal, the employer is not liable to the agent, either upon an express or an implied promise, to indemnify him against the consequences of that Act¹.

Non liability of employer of agent to do a criminal act

Illustrations

(a) A employs B to beat C and agrees to indemnify him against all consequences of the act. B thereupon beats C and has to pay damages to C for so doing. A is not liable to indemnify B for the damages.

(b) B the proprietor of a newspaper publishes at A's request a libel upon C in the paper, and A agrees to indemnify B against the consequences of the publication and all costs and damages of any action in respect thereof. B is sued by C and has to pay damages and also incurs expenses. A is not liable to B upon the indemnity.

225 The principal must make compensation to his agent in respect of injury² caused to such agent by the principal's neglect or want of skill.

Compensation to agent for injury caused by principal's neglect

¹ See s. 245.

² Cf. the Illustrations.

contracts Act 1850 (13 of 1855)

(Chapter X — Agency)

Illustration

A employs B as a bricklayer in building a house, and puts up the scaffolding himself. The scaffolding is unskilfully put up, and B is in consequence hurt. A must make compensation to B.

Effect of agency on contract with third persons

Enforce-
ment and
consequences
of agent's
contracts

226 Contracts entered into through an agent, and obligations arising from acts done by an agent, may be enforced in the same manner, and will have the same legal consequences, as if the contracts had been entered into and the acts done by the principal in person.

Illustrations:

(a) A buys goods from B knowing that he is an agent for their sale but not knowing who is the principal. B's principal is the person entitled to claim from A the price of the goods, and A cannot in a suit by the principal set off against that claim a debt due to himself from B.

(b) A being B's agent with authority to receive money on his behalf, receives from C a sum of money due to B. C is discharged of his obligation to pay the sum in question to B.

Principal
how far
bound
when
agent
exceeds
authority

227 When an agent does more than he is authorized to do, and when the part of what he does which is within his authority, can be separated from the part which is beyond his authority, so much only of what he does as is within his authority is binding as between him and his principal.

Illustration

A being owner of a ship and cargo authorizes B to procure an insurance for 4 000 rupees on the ship. B procures a policy for 4 000 rupees on the ship, and another for the like sum on the cargo. A is bound to pay the premium for the policy on the ship but not the premium for the policy on the cargo.

Principal not
bound when
excess of
agent's
authority is
not separ-
able.

228 Where an agent does more than he is authorized to do, and what he does beyond the scope of his authority cannot be separated from what is within it, the principal is not bound to recognize the transaction.

Illustration

A authorizes B to buy 500 sheep for him. B buys 500 sheep and 200 lambs for one sum of 6 000 rupees. A may repudiate the whole transaction.

Consequences
of notice
given to
agent

229 Any notice given to or information obtained by the agent, provided it be given or obtained in the course of the business transacted by him for the principal, shall, as between the principal and third parties have the same legal consequences as if it had been given to or obtained by the principal.

Illustrations:

(a) A is employed by B to buy from C certain goods of which C is the apparent owner and buys them accordingly. In the course of the treaty for the sale A learns that the goods really belonged to D but B is ignorant of that fact. B is not entitled to set off a debt owing to him from C against the price of the goods.

(Chapter X—Agency)

(b) A is employed by B to buy from C goods of which C is the apparent owner A was, before he was so employed, a servant of C and then learnt that the goods really belonged to D, but B is ignorant of that fact In spite of the knowledge of his agent, B may set off against the price of the goods a debt owing to him from C

230 In the absence of any contract to that effect, an agent cannot personally enforce contracts entered into by him on behalf of his principal, nor is he personally bound by them

Agent cannot personally enforce, nor be bound by, contracts on behalf of principal
Presumption of contract to contrary

Such a contract shall be presumed to exist in the following cases —

- (1) where the contract is made by an agent for the sale or purchase of goods for a merchant resident abroad
- (2) where the agent does not disclose the name of his principal
- (3) where the principal, though disclosed, cannot be sued

231 If an agent makes a contract with a person who neither knows, nor has reason to suspect, that he is an agent, his principal may require the performance of the contract, but the other contracting party has, as against the principal, the same rights as he would have had as against the agent if the agent had been principal

Rights of parties to a contract made by agent not disclosed

If the principal discloses himself before the contract is completed the other contracting party may refuse to fulfil the contract if he can show that, if he had known who was the principal in the contract or if he had known that the agent was not a principal he would not have entered into the contract

232 Where one man makes a contract with another, neither knowing nor having reasonable ground to suspect that the other is an agent, the principal, if he requires the performance of the contract, can only obtain such performance subject to the rights and obligations subsisting between the agent and the other party to the contract

Performance of contract with agent supposed to be principal

Illustration

A who owes 500 rupees to B sells 1000 rupees worth of rice to B A is acting as agent for C in the transaction but B has no knowledge nor reasonable ground of suspicion that such is the case C cannot compel B to take the rice without allowing him to set off A's debt

233 In cases where the agent is personally liable, a person dealing with him may hold either him or his principal, or both of them, liable

Right of person dealing with agent personally liable

Illustration

A enters into a contract with B to sell him 100 bales of cotton and afterwards discovers that B was acting as agent for C A may sue either B or C, or both, for the price of the cotton

234 When a person who has made a contract with an agent induces the agent to act upon the belief that the principal only will be held liable, or induces the principal to act upon the belief that the agent only will be held liable, he cannot afterwards hold liable the agent or principal respectively.

Consequence of inducing agent or principal to act on belief of that principal or agent will be held exclusively liable

(Chapter X — Agency Chapter XI — Of Partnership — Schedule)

Liability of
pretended
agent

235 A person untruly representing himself to be the authorized agent of another, and thereby inducing a third person to deal with him as such agent, is liable, if his alleged employer does not ratify his acts, to make compensation to the other in respect of any loss or damage which he has incurred by so dealing

Person
falsely con-
tracting as
agent not
entitled to
performance

236 A person with whom a contract has been entered into in the character of agent is not entitled to require the performance of it if he was in reality acting, not as agent, but on his own account

Liability of
principal
inducing
belief that
agent is un-
authorized
acts were
authorized

237 When an agent has, without authority, done acts or incurred obligations to third persons on behalf of his principal, the principal is bound by such acts or obligations if he has by his words or conduct induced such third persons to believe that such acts and obligations were within the scope of the agent's authority

Illustrations

(a) A consigns goods to B for sale, and gives him instructions not to sell under a fixed price C being ignorant of B's instructions, enters into a contract with B to buy the goods at a price lower than the reserved price A is bound by the contract

(b) A entrusts B with negotiable instruments endorsed in blank B sells them to C in violation of private orders from A The sale is good

Effect on
agreement,
of misre-
presentation
or fraud
by agent

238 Misrepresentations made, or frauds committed, by agents acting in the course of their business for their principals, have the same effect on agreements made by such agents as if such misrepresentations or frauds had been made or committed by the principals, but misrepresentations made, or frauds committed, by agents, in matters which do not fall within their authority, do not affect their principals

Illustrations

(a) A being B's agent for the sale of goods, induces C to buy them by a misrepresentation which he was not authorized by B to make The contract is voidable as between B and C, at the option of C

(b) A, the captain of B's ship, signs bills of lading without having received on board the goods mentioned therein The bills of lading are void as between B and the pretended consignor

CHAPTER XI — [Of Partnership] Rep by the Indian Partnership Act, 1932 (IX of 1932), s 73 and Sch II

SCHEDULE

Rep by the Repealing and Amending Act, 1914 (X of 1914), s 3 and Sch II

THE INDIAN CHRISTIAN MARRIAGE ACT, 1872

CONTENTS

PREAMBLE

PRELIMINARY

SECTIONS

- 1 Short title
Extent
 - 2 [*Repealed*]
 - 3 Interpretation clause
-

PART I

THE PERSONS BY WHOM MARRIAGES MAY BE SOLEMNIZED

- 4 Marriages to be solemnized according to Act^s
 - 5 Persons by whom marriages may be solemnized
 - 6 Grant and revocation of licenses to solemnize marriages
 - 7 Marriage Registrars
Senior Marriage Registrar
Magistrate when to be Marriage Registrar
 - 8 Marriage Registrars in Indian States
 - 9 Licensing of persons to grant certificates of marriage between
Native Christians
-

PART II

TIME AND PLACE AT WHICH MARRIAGES MAY BE SOLEMNIZED

- 10 Time for solemnizing marriage
Exceptions
- 11 Place for solemnizing marriage
Fee for special license.

PART III

MARRIAGES SOLEMNIZED BY MINISTERS OF RELIGION LICENSED UNDER
THIS ACT

SECTIONS

- 12 Notice of intended marriage
- 13 Publication of such notice
 - Return or transfer of notice
- 14 Notice of intended marriage in private dwelling
- 15 Sending copy of notice to Marriage Registrar when one party is a minor
- 16 Procedure on receipt of notice
- 17 Issue of certificate of notice given and declaration made
 - Proviso
- 18 Declaration before issue of certificate
- 19 Consent of father or guardian, or mother
- 20 Power to prohibit by notice issue of certificate
- 21 Procedure on receipt of notice
- 22 Issue of certificate in case of minority
- 23 Issue of certificates to Native Christians
- 24 Form of certificate
- 25 Solemnization of marriage
- 26 Certificate void if marriage not solemnized within two months

 PART IV

REGISTRATION OF MARRIAGES SOLEMNIZED BY MINISTERS OF RELIGION

- 27 Marriages when to be registered
- 28 Registration of marriages solemnized by Clergymen of Church of England
- 29 Quarterly returns to Archdeaconry
 - Contents of returns
- 30 *Registration and returns of marriages solemnized by Clergymen of Church of Rome*
- 31 *Registration and returns of marriages solemnized by Clergymen of Church of Scotland*

SECTIONS

- 32 Certain marriages to be registered in duplicate
- 33 Entries of such marriages to be signed and attested
- 34 Certificate to be forwarded to Marriage Registrar, copied and sent to Registrar General
- 35 Copies of certificates to be entered and numbered
- 36 Registrar to add number of entry to certificate and send to Registrar General
- 37 Registration of marriages between Native Christians by persons referred to in clauses (1) (2) and (3) of section 5
- Custody and disposal of register book

 PART V

MARRIAGES SOLEMNIZED BY, OR IN THE PRESENCE OF A MARRIAGE REGISTRAR

- 38 Notice of intended marriage before Marriage Registrar
- 39 Publication of notice
- 40 Notice to be filed and copy entered in Marriage Notice Book
- 41 Certificate of notice given and oath made
 - Proviso
- 42 Oath before issue of certificate
- 43 Petition to High Court to order certificate in less than fourteen days
 - Order on petition
- 44 Consent of father or guardian
 - Protest against issue of certificate
 - Effect of protest
- 45 Petition where person whose consent is necessary is insane, or unjustly withholds consent
 - Procedure on petition
- 46 Petition when Marriage Registrar refuses certificate
 - Procedure on petition
- 47 Petition when Marriage Registrar in Indian State refuses certificate

SECTIONS

- 48 Petition when Registrar doubts authority of person forbidding
Procedure on petition
Reference when Marriage Registrar in Indian State doubts
authority of person forbidding
Procedure on reference
- 49 Liability for frivolous protest against issue of certificate
- 50 Form of certificate
- 51 Solemnization of marriage after issue of certificate
- 52 When marriage not had within two months after notice, new
notice required
- 53 Marriage Registrar may ask for particulars to be registered
- 54 Registration of marriage solemnized under Part V
- 55 Certificates to be sent monthly to Registrar General
Custody of register book
- 56 Officers to whom Registrars in Indian States shall send certi-
ficates
- 57 Registrars to ascertain that notice and certificate are under-
stood by Native Christians
- 58 Native Christians to be made to understand declarations
- 59 Registration of marriages between Native Christians

 PART VI

MARRIAGE OF NATIVE CHRISTIANS

- 60 On what conditions marriages of Native Christians may be
certified
- 61 Grant of certificate
- 62 Keeping of register book and deposit of extracts therefrom with
Registrar General
- 63 Searches in register book and copies of entries
- 64 Books in which marriages of Native Christians under Part I or
Part III are registered
- 65 Part VI not to apply to Roman Catholics
Saving of certain marriages

PART VII

PENALTIES

SECTIONS

- 66 False oath declaration notice or certificate for procuring marriage
- 67 Forbidding by false personation issue of certificate by Marriage Registrar
- 68 Solemnizing marriage without due authority
- 69 Solemnizing marriage out of proper time or without witnesses
Saving of marriages solemnized under special license
- 70 Solemnizing without notice or within fourteen days after notice, marriage with minor
- 71 Issuing certificate of marriage without publication of notice
marrying after expiry of notice
solemnizing marriage with minor within fourteen days without authority of Court or without sending copy of notice, issuing certificate against authorized prohibition
- 72 Issuing certificate after expiry of notice or in case of minor within fourteen days after notice or against authorized prohibition
- 73 Persons authorized to solemnize marriage (other than Clergy of Churches of England, Scotland or Rome)
issuing certificate or marrying without publishing notice, or after expiry of certificate,
issuing certificate for or solemnizing marriage with minor within fourteen days after notice
issuing certificate authorizedly forbidden
solemnizing marriage authorizedly forbidden
- 74 Unlicensed person granting certificate pretending to be licensed
- 75 Destroying or falsifying register books
- 76 Limitation of prosecutions under Act

PART VIII

MISCELLANEOUS

- 77 What matters need not be proved in respect of marriage in accordance with Act

SECTIONS

- 78 Correction of errors.
 - 79. Searches and copies of entries
 - 80. Certified copy of entry in marriage register, etc., to be evidence.
 - 81 Certificates of certain marriages for Secretary of State.
 - 82 Provincial Government to prescribe fees
 - 83 Power to make rules
 - 84. Power to prescribe fees and rules for Indian States.
 - 85 Power to declare who shall be District Judge.
 - 86 Powers and functions exercisable as regards Indian States.
 - 87 Saving of Consular marriages.
 - 88 Non-validation of marriages within prohibited degrees
-

SCHEDULE I.—NOTICE OF MARRIAGE.

SCHEDULE II —CERTIFICATE OF RECEIPT OF NOTICE.

SCHEDULE III —FORM OF REGISTER OF MARRIAGES.

SCHEDULE IV —MARRIAGE REGISTER-BOOK

CERTIFICATE OF MARRIAGE

SCHEDULE V —[*Repeated*]

(Preliminary.)

ACT No XV OF 1872¹

[18th July 1872]

An Act to consolidate and amend the law relating to the solemnization in India of the marriages of Christians

WHEREAS it is expedient to consolidate and amend the law relating to the solemnization in India of the marriages of persons professing the Christian religion, It is hereby enacted as follows —

PRELIMINARY.

1 This Act may be called the Indian Christian Marriage Act, 1872 Short title

It extends to the whole of British India,² and, so far only as regards Christian subjects of Her Majesty, to ³[the Indian States]

4* * * *

2. [Enactments repealed] Rep by the Repealing Act, 1938 (1 of 1938), s. 2 and Sch

¹ For the Statement of Objects and Reasons, see Gazette of India, 1871, Pt. V p. 473, for Proceedings in Council, see *ibid*, 1870, Supplement, p. 1077, *ibid* 1871 Supplement, pp. 1426, 1643, *ibid* 1872, Supplement, pp. 257, 728, 742, 805, 813 and 858. This Act is based on 14 and 15 Vict., c. 40, and 58 Geo. III, c. 64 (both Statutes relate to marriages in India and are now no longer in force) and Acts 5 of 1852 and 5 of 1865 the last two Acts were rep. by this Act.

² This Act has been declared to be in force in British Baluchistan by the British Baluchistan Laws Regulation 1913 (2 of 1913), s. 3, in the Sonthal Parganas by the Sonthal Parganas Settlement Regulation (3 of 1872), s. 3, in the Chittagong Hill tracts by notification under s. 4 (2) of the Chittagong Hill tracts Regulation 1900 (1 of 1900), see Notfn. No. 10851 I. A., dated 7th October 1925, Calcutta Gazette, 1925, Pt. I, p. 1555, also by notification under s. 3 of the Scheduled Districts Act 1874 (14 of 1874) in the following Scheduled Districts, namely —the Districts of Hazaribagh, Lohardaga and Munbhum, and Pargana Dhalbhum and the Kolhan in the District of Singhbhum [see Gazette of India, 1931, Pt. I, p. 564], and the North Western Provinces Tarai [see *ibid* 1876, Pt. I, p. 525]. It has also been extended by notification under s. 5 of the same Act to the Sadia Frontier Tract [see Assam Gazette, 1920, Pt. II, p. 1933].

The District of Lohardaga, now called the Ranchi District (see Calcutta Gazette 1899 Pt. I, p. 44), included at this time the Palam District which was a part of it in 1894.

³ Subs. by the A. O. for 'the territories of Native Princes and States in India with Her Majesty' for the definition of the expression 'Indian State', see the General Clauses Act, 1897 (10 of 1897) s. 3 (27 b).

⁴ The commencement clause was rep. by the Repealing Act 1934 (15 of 1934).

(Preliminary Part I.—The Persons by whom Marriages may be solemnized)

Interpreta-
tion clause

3 In this Act, unless there is something repugnant in the subject or context,—

'Church of England' and 'Anglican' mean and apply to the Church of England as by law established;

'Church of Scotland' means the Church of Scotland as by law established,

'Church of Rome' and 'Roman Catholic' mean and apply to the Church which regards the Pope of Rome as its spiritual head;

'Church' includes any chapel or other building generally used for public Christian worship,

minor means a person who has not completed the age of twenty-one years and who is not a widower or a widow,

1* * * *

the expression 'Christians' means persons professing the Christian religion,

and the expression 'Native Christians' includes the Christian descendants of Natives of India converted to Christianity, as well as such converts,

2[Registrar General of Births, Deaths and Marriages' means a Registrar General of Births, Deaths and Marriages appointed under the Births, Deaths and Marriages Registration Act, 1886]

VI c

PART I

THE PERSONS BY WHOM MARRIAGES MAY BE SOLEMNIZED

Marriages
to be
solemnized
according
to Act

4 Every marriage between persons, one or both of whom is ³[or are] a Christian or Christians, shall be solemnized in accordance with the provisions of the next following section, and any such marriage solemnized otherwise than in accordance with such provisions shall be void

¹ The definition of 'Native State' which read "Native State means the territories of any Native Prince or State in alliance with Her Majesty" was rep by the A O

² Ins by the Births Deaths and Marriages Registration Act, 1886 (6 of 1886), s 30

³ Ins by the Amending Act, 1891 (12 of 1891) s 2 and Sch II

(Part I—Persons by whom Marriages may be solemnized)

5 Marriages may be solemnized in India—

Persons by whom marriages may be solemnized

- (1) by any person who has received episcopal ordination, provided that the marriage be solemnized according to the rules, rites, ceremonies and customs of the Church of which he is a Minister,
- (2) by any Clergyman of the Church of Scotland, provided that such marriage be solemnized according to the rules, rites ceremonies and customs of the Church of Scotland
- (3) by any Minister of Religion licensed under this Act to solemnize marriages,
- (4) by, or in the presence of a Marriage Registrar appointed under this Act,
- (5) by any person licensed under this Act to grant certificates of marriage between Native Christians

¹[6 The ²[Provincial Government] so far as regards the territories under its administration and the ³[Central Government] so far as regards any ⁴[Indian State] may by notification in the ⁵[Official Gazette] ⁶* * * grant licenses⁷ to Ministers of Religion to solemnize marriages within such territories and State respectively and may by a like notification revoke such licenses]

7 The ²[Provincial Government] may appoint one or more Christian Ministers either by name or as holding any office for the time being, to be the Marriage Registrar or Marriage Registrars for any district subject to its administration

Where there are more Marriage Registrars than one in any district, the ²[Provincial Government] shall appoint one of them to be the Senior Marriage Registrar

When there is only one Marriage Registrar in a district, and such Registrar is absent from such district, or ill, or when his office is temporarily vacant, the Magistrate of the district shall act as, and be, Registrar

¹ Subs. by the Indian Christian Marriage Act (1872) Amendment Act, 1891 (2 of 1891) s. 1, for original s. 6

² Subs. by the A. O. for I. G.

³ Subs. by the A. O. for G. C. in C.

⁴ Subs. by the A. O. for Native State

⁵ Subs. by the A. O. for Local Official Gazette

⁶ The words "or in the Gazette of India, as the case may be" inserted by the A. O.

⁷ As to validation of licenses granted under former Acts see the Indian Christian Marriage Act (1872) Amendment Act, 1891 (2 of 1891) s. 1 (2) and (3)

(Part I—Persons by whom Marriages may be solemnized Part II—
Time and Place at which Marriages may be solemnized)

Marriage Registrar thereof during such absence illness or temporary
vacancy

Marriage
Registrar
in India
States

8 The ¹[Central Government] may, by notification in the ²[Official Gazette], appoint any Christian, either by name or as holding any office for the time being, to be a Marriage Registrar in respect of any district or place within ³[any Indian State]

The ¹[Central Government] may, by like notification, revoke any such appointment

Licensing of
persons to
grant certi-
ficates of
marriage
between
Native
Christians

9 The ⁴[Provincial Government] or (so far as regards any ⁵[Indian State]) the ¹[Central Government] may grant a license to any Christian, either by name or as holding any office for the time being, authorizing him to grant certificate of marriage between Native Christians

Any such license may be revoked by the authority by which it was granted and every such grant or revocation shall be notified in the Official Gazette

PART II

TIME AND PLACE AT WHICH MARRIAGES MAY BE SOLEMNIZED

Time for
solemnizing
marriage
Exceptions

10 Every marriage under this Act shall be solemnized between the hours of six in the morning and seven in the evening

Provided that nothing in this section shall apply to—

(1) a Clergyman of the Church of England solemnizing a marriage under a special license permitting him to do so at any hour other than between six in the morning and seven in the evening, under the hand and seal of the Anglican Bishop of the Diocese or his Commissary, or

(2) a Clergyman of the Church of Rome solemnizing a marriage between the hours of seven in the evening and six in the morning, when he has received a general or special license in that behalf from the Roman Catholic Bishop of the Diocese or Vicariate in which such marriage is so solemnized or from such person as the same Bishop has authorized to grant such license ⁶[or

¹ Subs by the A O for G G in C

² Subs by the A O for Gazette of India

³ Subs by the A O for the words the territories of any Native Prince or State in alliance with Her Majesty

⁴ Subs by the A O for L G

⁵ Subs by the A O for Native State

⁶ Ins by s 2 of the Indian Christian Marriage Act (1872) Amendment Act 1891 (2 of 1891)

(Part II —Time and Place at which Marriages may be solemnized
 Part III —Marriages solemnized by Ministers of Religion licensed
 under this Act)

(3) a Clergyman of the Church of Scotland solemnizing a marriage according to the rules, rites, ceremonies and customs of the Church of Scotland]

11 No Clergyman of the Church of England shall solemnize a marriage in any place other than a church ^{Place for solemnizing marriage} ¹[where worship is generally held according to the forms of the Church of England],

unless there is no ¹[such] church within five miles distance by the shortest road from such place, or

unless he has received a special license authorizing him to do so under the hand and seal of the Anglican Bishop of the Diocese or his Commissary

For such special license the Registrar of the Diocese may charge ^{Fee for special license} such additional fee as the said Bishop from time to time authorizes

PART III

MARRIAGES SOLEMNIZED BY MINISTERS OF RELIGION LICENSED UNDER THIS ACT

12 Whenever a marriage is intended to be solemnized by a Minister of Religion licensed to solemnize marriages under this Act— ^{Notice of intended marriage}

one of the persons intending marriage shall give notice in writing, according to the form contained in the first schedule hereto annexed, or to the like effect, to the Minister of Religion whom he or she desires to solemnize the marriage, and shall state therein—

- (a) the name and surname and the profession or condition, of each of the persons intending marriage,
- (b) the dwelling place of each of them,
- (c) the time during which each has dwelt there, and
- (d) the church or private dwelling in which the marriage is to be solemnized

Provided that, if either of such persons has dwelt in the place mentioned in the notice during more than one month, it may be stated therein that he or she has dwelt there one month and upwards

(Part III—Marriages solemnized by Ministers of Religion licensed under this Act)

Publication of such notice

13 If the persons intending marriage desire it to be solemnized in a particular church, and if the Minister of Religion to whom such notice has been delivered be entitled to officiate therein, he shall cause the notice to be affixed in some conspicuous part of such church

Return or transfer of notice

But if he is not entitled to officiate as a Minister in such church, he shall, at his option, either return the notice to the person who delivered it to him, or deliver it to some other Minister entitled to officiate therein, who shall thereupon cause the notice to be affixed as aforesaid

Notice of intended marriage in private dwelling

14 If it be intended that the marriage shall be solemnized in a private dwelling, the Minister of Religion, on receiving the notice prescribed in section 12, shall forward it to the Marriage Registrar of the district, who shall affix the same to some conspicuous place in his own office

Sending copy of notice to Marriage Registrar when one party is a minor

15 When one of the persons intending marriage is a minor, every Minister receiving such notice shall, unless within twenty four hours after its receipt he returns the same under the provisions of section 13, send by the post or otherwise a copy of such notice to the Marriage Registrar of the district, or, if there be more than one Registrar of such district, to the Senior Marriage Registrar

Procedure on receipt of notice

16 The Marriage Registrar or Senior Marriage Registrar, as the case may be, on receiving any such notice, shall affix it to some conspicuous place in his own office, and the latter shall further cause a copy of the said notice to be sent to each of the other Marriage Registrars in the same district, who shall likewise publish the same in the manner above directed

Issue of certificate of notice given and declaration made

17 Any Minister of Religion consenting or intending to solemnize any such marriage as aforesaid, shall, on being required so to do by or on behalf of the person by whom the notice was given, and upon one of the persons intending marriage making the declaration hereinafter required, issue under his hand a certificate of such notice having been given and of such declaration having been made

Provido

Provided—

- (1) that no such certificate shall be issued until the expiration of four days after the date of the receipt of the notice by such Minister,
- (2) that no lawful impediment be shown to his satisfaction why such certificate should not issue, and

(Part III —Marriages solemnized by Ministers of Religion licensed under this Act)

(3) that the issue of such certificate has not been forbidden, in manner hereinafter mentioned by any person authorized in that behalf

18 The certificate mentioned in section 17 shall not be issued until one of the persons intending marriage has appeared personally before the Minister and made a solemn declaration—

Declaration before issue of certificate

(a) that he or she believes that there is not any impediment of kindred or affinity or other lawful hindrance to the said marriage

and when either or both of the parties is or are a minor or minors,

(b) that the consent or consents required by law has or have been obtained thereto or that there is no person resident in India having authority to give such consent as the case may be

19 The father if living of any minor or if the father be dead the guardian of the person of such minor and in case there be no such guardian then the mother of such minor may give consent to the minor's marriage

Consent of father or guardian or mother

and such consent is hereby required for the same marriage, unless no person authorized to give such consent be resident in India

20 Every person whose consent to a marriage is required under section 19 is hereby authorized to prohibit the issue of the certificate by any Minister at any time before the issue of the same by notice in writing to such Minister, subscribed by the person so authorized with his or her name and place of abode and position with respect to either of the persons intending marriage by reason of which he or she is so authorized is aforesaid

Power to prohibit by notice the issue of certificate

21 If any such notice be received by such Minister, he shall refuse to issue his certificate and shall not solemnize the said marriage until he has examined into the matter of the said prohibition, and is satisfied that the person prohibiting the marriage has no lawful authority for such prohibition

Procedure on receipt of notice

or until the said notice is withdrawn by the person who gave it

22 When either of the persons intending marriage is a minor, and if the Minister is not satisfied that the consent of the person whose consent to such marriage is required by section 19 has been obtained, such

Issue of certificate in case of minor

(Part III — Marriages solemnized by Ministers of Religion licensed under this Act Part IV — Registration of Marriages solemnized by Ministers of Religion)

Minister shall not issue such certificate until the expiration of fourteen days after the receipt by him of the notice of marriage

Issue of
certificates
to Native
Christians

23 When any Native Christian about to be married takes a notice of marriage to a Minister of Religion, or applies for a certificate from such Minister under section 17, such Minister shall, before issuing the certificate, ascertain whether such Native Christian is cognizant of the purport and effect of the said notice or certificate as the case may be, and, if not shall translate or cause to be translated the notice or certificate to such Native Christian into some language which he understands

Form of
certificate

24 The certificate to be issued by such Minister shall be in the form contained in the second schedule hereto annexed, or to the like effect

Solemniza-
tion of
marriage

25 After the issue of the certificate by the Minister, marriage may be solemnized between the persons therein described according to such form or ceremony as the Minister thinks fit to adopt

Provided that the marriage be solemnized in the presence of at least two witnesses besides the Minister

Certificate
void if
marriage
not
solemnized
within two
months

26 Whenever a marriage is not solemnized within two months after the date of the certificate issued by such Minister as aforesaid, such certificate and all proceedings (if any) thereon shall be void,

and no person shall proceed to solemnize the said marriage until new notice has been given and a certificate thereof issued in manner aforesaid

PART IV

REGISTRATION OF MARRIAGES SOLEMNIZED BY MINISTERS OF RELIGION

Marriages
when to be
registered

27 All marriages hereafter solemnized in India between persons one or both of whom professes or profess the Christian religion, except marriages solemnized under Part V or Part VI of this Act, shall be registered¹ in manner hereinafter prescribed

Registration
of marriages
solemnized
by clergy
men of
Church of
England

28 Every Clergyman of the Church of England shall keep a register of marriages and shall register therein, according to the tabular form set forth in the third schedule hereto annexed, every marriage which he solemnizes under this Act

¹ As to the establishment of general registry offices of births deaths and marriages, see the Births Deaths and Marriages Registration Act 1886 (6 of 1886)
Ch II

(Part II — Registration of Marriages solemnized by Ministers of Religion)

29 Every Clergyman of the Church of England shall send four times in every year returns in duplicate authenticated by his signature, of the entries in the register of marriages solemnized at any place where he has any spiritual charge to the Registrar of the Archdeaconry to which he is subject or within the limits of which such place is situate

Quarterly
returns to
Archdeacon
convent

Such quarterly returns shall contain all the entries of marriages contained in the said register from the first day of January to the thirty first day of March from the first day of April to the thirtieth day of June from the first day of July to the thirtieth day of September and from the first day of October to the thirty first day of December of each year respectively and shall be sent by such Clergyman within two weeks from the expiration of each of the quarters above specified

Contents of
returns

The said Registrar upon receiving the said returns shall send one copy thereof to the [Registrar General of Births Deaths and Marriages]

30 Every marriage solemnized by a Clergyman of the Church of Rome shall be registered by the person and according to the form directed in that behalf by the Roman Catholic Bishop of the Diocese or Vicariate in which such marriage is solemnized

Registration
and returns
of marriages
solemnized
by Clergy
men of
Church of
Rome

and such person shall forward quarterly to the [Registrar General of Births Deaths and Marriages] returns of the entries of all marriages registered by him during the three months next preceding

31 Every Clergyman of the Church of Scotland shall keep a register of marriages

Registration
and returns
of
marriages
solemnized
by Clergy
men of
Church of
Scotland

and shall register therein according to the tabular form set forth in the third schedule hereto annexed every marriage which he solemnizes under this Act,

and shall forward quarterly to the [Registrar General of Births Deaths and Marriages] through the Senior Chaplain of the Church of Scotland returns similar to those prescribed in section 29 of all such marriages

32 Every marriage solemnized by any person who has received episcopal ordination, but who is not a Clergyman of the Church of England or of the Church of Rome or by any Minister of Religion licensed under this Act to solemnize marriage shall immediately after the solemnization thereof be registered in duplicate by the person solemnizing the same (that is to say) in a marriage register book to be kept by

Certain
marriages to
be registered
in duplicate

(Part IV —Registration of Marriages solemnized by Ministers of Religion)

him for that purpose, according to the form contained in the fourth schedule hereto annexed, and also in a certificate attached to the marriage register book as a counterfoil

Entries of such marriages to be signed and attested

33 The entry of such marriage in both the certificate and marriage-register book shall be signed by the person solemnizing the marriage, and also by the persons married and shall be attested by two credible witnesses other than the person solemnizing the marriage, present at its solemnization

Every such entry shall be made in order from the beginning to the end of the book, and the number of the certificate shall correspond with that of the entry in the marriage register book

Certificate to be forwarded to Marriage Registrar, copied and sent to Registrar General

34 The person solemnizing the marriage shall forthwith separate the certificate from the marriage register book and send it, within one month from the time of the solemnization, to the Marriage Registrar of the district in which the marriage was solemnized, or, if there be more Marriage Registrars than one, to the Senior Marriage Registrar,

who shall cause such certificate to be copied into a book to be kept by him for that purpose,

and shall send all the certificates which he has received during the month with such number and signature or initials added thereto as are hereinafter required, to the ¹[Registrar General of Births, Deaths and Marriages]

Copies of certificates to be entered and numbered

35 Such copies shall be entered in order from the beginning to the end of the said book and shall bear both the number of the certificate as copied and also a number to be entered by the Marriage Registrar, indicating the number of the entry of the said copy in the said book, according to the order in which he receives each certificate

Registrar to add number of entry to certificate, and send to Registrar General
Registration of marriages between Native Christians

36 The Marriage Registrar shall also add such last mentioned number of the entry of the copy in the book to the certificate, with his signature or initials, and shall at the end of every month, send the same to the ¹[Registrar General of Births Deaths and Marriages]

37 When any marriage between Native Christians is solemnized ²[by any such person Clergyman or Minister of Religion as is referred to in clause (1) clause (2) or clause (3) of section 5], the person solemnizing the same shall instead of proceeding in the manner provided by

¹ Subs. by s. 30 (1) of the Births Deaths and Marriages Registration Act 1886 (6 of 1886) for the words Secretary to the L. G.

² Subs. by s. 2 and Sch. I of the Repealing and Amending Act, 1928 (18 of 1928) for in l.r Part I or Part III of this Act

(Part IV—Registration of Marriages solemnized by Ministers of Religion Part V—Marriages solemnized by, or in the presence of, a Marriage Registrar)

sections 28 to 36, both inclusive, register the marriage in a separate register book, and shall keep it safely until it is filled or if he leave the district in which he solemnized the marriage before the said book is filled, shall make over the same to the person succeeding to his duties in the said district ^{by persons referred to in clauses (1) (2) and (3) of section 5}

Whoever has the control of the book at the time when it is filled, shall send it to the Marriage Registrar of the district, or, if there be more Marriage Registrars than one, to the Senior Marriage Registrar, who shall send it to the [Registrar General of Births, Deaths and Marriages] to be kept by him with the records of his office ^{Custody and disposal of register book}

PART V

MARRIAGES SOLEMNIZED BY OR IN THE PRESENCE OF, A MARRIAGE REGISTRAR

38 When a marriage is intended to be solemnized by or in the presence of, a Marriage Registrar, one of the parties to such marriage shall give notice in writing, in the form contained in the first schedule hereto annexed, or to the like effect, to any Marriage Registrar of the District within which the parties have dwelt ^{Notice of intended marriage before Marriage Registrar}

or, if the parties dwell in different districts shall give the like notice to a Marriage Registrar of each district,

and shall state therein the name and surname, and the profession or condition of each of the parties intending marriage, the dwelling place of each of them the time during which each has dwelt therein, and the place at which the marriage is to be solemnized

Provided that if either party has dwelt in the place stated in the notice for more than one month, it may be stated therein that he or she has dwelt there one month and upwards

39 Every Marriage Registrar shall, on receiving any such notice, ^{Full name} cause a copy thereof to be affixed in some conspicuous place in his office ^{of the}

When one of the parties intending marriage is a minor, every Marriage Registrar shall, within twenty four hours after the receipt by him of the notice of such marriage, send, by post or otherwise, a copy

¹Subs. by s. 30 (b) of the Births, Deaths and Marriages Registration Act, 1906 (6 of 1906) for the words "Secretary to the L. G."

(Part V—Marriages solemnized by or in the presence of, a Marriage Registrar)

of such notice to each of the other Marriage Registrars (if any) in the same district, who shall likewise affix the copy in some conspicuous place in his own office

Notice to be
filed and
copy entered
in
Marriage
Notice
Book

40 The Marriage Registrar shall file all such notices and keep them with the records of his office

and shall also forthwith enter a true copy of all such notices in a book to be furnished to him for that purpose by the ¹[Provincial Government] and to be called the 'Marriage Notice Book',

and the Marriage Notice Book shall be open at all reasonable times, without fee, to all persons desirous of inspecting the same

Certificate
of notice
given and
oath made

41 If the party by whom the notice was given requests the Marriage Registrar to issue the certificate next hereinafter mentioned, and if one of the parties intending marriage has made oath as hereinafter required, the Marriage Registrar shall issue under his hand a certificate of such notice having been given and of such oath having been made

Provido

Provided—

that no lawful impediment be shown to his satisfaction why such certificate should not issue,

that the issue of such certificate has not been forbidden in manner hereinafter mentioned by any person authorized in that behalf by this Act

that four days after the receipt of the notice have expired and further,

that where, by such oath, it appears that one of the parties intending marriage is a minor fourteen days after the entry of such notice have expired

Oath before
issue of
certificate

42 The certificate mentioned in section 41 shall not be issued by any Marriage Registrar, until one of the parties intending marriage appears personally before such Marriage Registrar and makes oath²—

(a) that he or she believes that there is not any impediment of kindred or affinity or other lawful hindrance, to the said marriage and

(b) that both the parties have or (where they have dwelt in the districts of different Marriage Registrars) that the party

¹ Subs by the A O for L G

² As to meaning of oath see the General Clauses Act 1897 (10 of 1897) s 3 cl (3c) and s 4

(Part V —Marriages solemnized by, or in the presence of a Marriage Registrar)

making such oath has, had their, his or her usual place of abode within the district of such Marriage Registrar, and where either or each of the parties is a minor —

(c) that the consent or consents to such marriage required by law has or have been obtained thereto or that there is no person resident in India authorized to give such consent, as the case may be

43 When one of the parties intending marriage is a minor and both such parties are at the time resident in any of the towns of Calcutta, Madras and Bombay and are desirous of being married in less than fourteen days after the entry of such notice as aforesaid, they may apply by petition to a Judge of the High Court for an order upon the Marriage Registrar to whom the notice of marriage has been given, directing him to issue his certificate before the expiration of the said fourteen days required by section 41

And on sufficient cause being shown the said Judge may in his discretion make an order upon such Marriage Registrar directing him to issue his certificate at any time to be mentioned in the said order before the expiration of the fourteen days so required

And the said Marriage Registrar, on receipt of the said order shall issue his certificate in accordance therewith

44 The provisions of section 19 apply to every marriage under this Part, either of the parties to which is a minor

and any person whose consent to such marriage would be required thereunder may enter a protest against the issue of the Marriage Registrar's certificate by writing at any time before the issue of such certificate the word 'forbidden' opposite to the entry of the notice of such intended marriage in the Marriage Notice Book and by subscribing thereto his or her name and place of abode and his or her position with respect to either of the parties by reason of which he or she is so authorized

When such protest has been entered no certificate shall issue until the Marriage Registrar has examined into the matter of the protest and is satisfied that it ought not to obstruct the issue of the certificate for that said marriage or until the protest is withdrawn by the person who entered it

45 If any person whose consent is necessary to any marriage under this Part is of unsound mind

(Part V—Marriages solemnized by or in the presence of a Marriage Registrar)

of such notice to each of the other Marriage Registrars (if any) in the same district, who shall likewise affix the copy in some conspicuous place in his own office

Notice to be
filed and
copy entered
in
Marriage
Notice
Book

40 The Marriage Registrar shall file all such notices and keep them with the records of his office

and shall also forthwith enter a true copy of all such notices in a book to be furnished to him for that purpose by the ¹[Provincial Government] and to be called the 'Marriage Notice Book',

and the Marriage Notice Book shall be open at all reasonable times without fee to all persons desirous of inspecting the same

Certificate
of notice
given and
oath made

41 If the party by whom the notice was given requests the Marriage Registrar to issue the certificate next hereinafter mentioned and if one of the parties intending marriage has made oath as hereinafter required, the Marriage Registrar shall issue under his hand a certificate of such notice having been given and of such oath having been made

Proviso

Provided—

that no lawful impediment be shown to his satisfaction why such certificate should not issue

that the issue of such certificate has not been forbidden in manner hereinafter mentioned by any person authorized in that behalf by this Act

that four days after the receipt of the notice have expired and further

that where by such oath it appears that one of the parties intending marriage is a minor, fourteen days after the entry of such notice have expired

Oath before
issue of
certificate

42 The certificate mentioned in section 41 shall not be issued by any Marriage Registrar until one of the parties intending marriage appears personally before such Marriage Registrar and makes oath²—

(a) that he or she believes that there is not any impediment of kindred or affinity or other lawful hindrance to the said marriage and

(b) that both the parties have or (where they have dwelt in the districts of different Marriage Registrars) that the party

¹ Subs. by the A. O. for L. G.

² As to meaning of oath see the General Clauses Act 1897 (10 of 1897) s. 3 cl. (36) and s. 4

(Part V—Marriages solemnized by or in the presence of a Marriage Registrar)

making such oath his, had their, his or her usual place of abode within the district of such Marriage Registrar and, where either or each of the parties is a minor,—

(c) that the consent or consents to such marriage required by law has or have been obtained thereto or that there is no person resident in India authorized to give such consent as the case may be

43 When one of the parties intending marriage is a minor and both such parties are at the time resident in any of the towns of Calcutta, Madras and Bombay and are desirous of being married in less than fourteen days after the entry of such notice as aforesaid, they may apply by petition to a Judge of the High Court for an order upon the Marriage Registrar to whom the notice of marriage has been given, directing him to issue his certificate before the expiration of the said fourteen days required by section 41.

And on sufficient cause being shown the said Judge may in his discretion make an order upon such Marriage Registrar directing him to issue his certificate at any time to be mentioned in the said order before the expiration of the fourteen days so required.

And the said Marriage Registrar on receipt of the said order shall issue his certificate in accordance therewith.

44 The provisions of section 19 apply to every marriage under this Part, either of the parties to which is a minor.

and any person whose consent to such marriage would be required thereunder may enter a protest against the issue of the Marriage Registrar's certificate by writing at any time before the issue of such certificate the word forbidden opposite to the entry of the notice of such intended marriage in the Marriage Notice Book and by subscribing thereto his or her name and place of abode and his or her position with respect to either of the parties by reason of which he or she is so authorized.

When such protest has been entered no certificate shall issue until the Marriage Registrar has examined into the matter of the protest and is satisfied that it ought not to obstruct the issue of the certificate for the said marriage or until the protest be withdrawn by the person who entered it.

45 If any person whose consent is necessary to any marriage under this Part is of unsound mind

(Part V —Marriages solemnized by, or in the presence of, a Marriage Registrar)

whose consent is necessary is insane or unjustly withholds consent

or if any such person (other than the father) without just cause withholds his consent to the marriage,

the parties intending marriage may apply by petition, where the person whose consent is necessary is resident within any of the towns of Calcutta, Madras and Bombay, to a Judge of the High Court, or if he is not resident within any of the said towns, then to the District Judge

Procedure on petition

And the said Judge of the High Court, or District Judge, as the case may be, may examine the allegations of the petition in a summary way

and if upon examination such marriage appears proper, such Judge of the High Court or District Judge, as the case may be, shall declare the marriage to be a proper marriage

Such declaration shall be as effectual as if the person whose consent was needed had consented to the marriage,

and, if he has forbidden the issue of the Marriage Registrar's certificate, such certificate shall be issued and the like proceedings may be had under this Part in relation to the marriage as if the issue of such certificate had not been forbidden

Petition when Marriage Registrar refuses certificate

46 Whenever a Marriage Registrar refuses to issue a certificate under this Part, either of the parties intending marriage may apply by petition, where the district of such Registrar is within any of the towns of Calcutta, Madras and Bombay to a Judge of the High Court, or if such district is not within any of the said towns, then to the District Judge

Procedure on petition

The said Judge of the High Court, or District Judge, as the case may be, may examine the allegations of the petition in a summary way, and shall decide thereon

The decision of such Judge of the High Court or District Judge, as the case may be, shall be final and the Marriage Registrar to whom the application for the issue of a certificate was originally made shall proceed in accordance therewith

Petition when Marriage Registrar refuses certificate

47 Whenever a Marriage Registrar resident in any ¹[Indian State] refuses to issue his certificate, either of the parties intending marriage may apply by petition to the ²[Central Government], who shall decide thereon

Such decision shall be final and the Marriage Registrar to whom the application was originally made shall proceed in accordance therewith

¹ Subs by the A O for 'Native State'

² Subs by the A O for 'G G in C'

(Part 1 — Marriages solemnized by, or in the presence of, a Marriage Registrar)

48 Whenever a Marriage Registrar acting under the provisions of section 44 is not satisfied that the person forbidding the issue of the certificate is authorized by law so to do the said Marriage Registrar shall apply by petition, where his district is within any of the towns of Calcutta Madras and Bombay, to a Judge of the High Court or, if such district be not within any of the said towns then to the District Judge

The said petition shall state all the circumstances of the case and pray for the order and direction of the Court concerning the same, and the said Judge of the High Court or District Judge, as the case may be shall examine into the allegations of the petition and the circumstances of the case,

and if upon such examination it appears that the person forbidding the issue of such certificate is not authorized by law so to do such Judge of the High Court or District Judge as the case may be shall declare that the person forbidding the issue of such certificate is not authorized as aforesaid

and thereupon such certificate shall be issued and the like proceedings may be had in relation to such marriage as if the issue had not been forbidden

Whenever a Marriage Registrar appointed under section 8 to act within any 1[Indian State] is not satisfied that the person forbidding the issue of the certificate is authorized by law so to do, the said Marriage Registrar shall send a statement of all the circumstances of the case, together with all documents relating thereto to the 2[Central Government]

If it appears to the 2[Central Government] that the person forbidding the issue of such certificate is not authorized by law so to do, the 2[Central Government] shall declare that the person forbidding the issue of such certificate is not authorized as aforesaid

and thereupon such certificate shall be issued and the like proceedings may be had in relation to such marriage as if the issue of the certificate had not been forbidden

49 Every person entering a protest with the Marriage Registrar, under this Part, against the issue of any certificate on grounds which such Marriage Registrar, under section 44 or a Judge of the High

1. A person who doubts the authority of a person forbidding

1. A person who doubts the authority of a person forbidding

Reference when Marriage Registrar in Indian State is to the authority of person forbidding

1. A person who doubts the authority of a person forbidding

Liability for frivolous protest against issue of cert

1 Subs by the A O for Native State
2 Subs by the A O for G G in C

(Part 1 —Marriages solemnized by, or in the presence of, a Marriage Registrar)

Court or the District Judge, under section 45 or 46, declares to be frivolous and such as ought not to obstruct the issue of the certificate, shall be liable for the costs of all proceedings in relation thereto and for damages, to be recovered by suit by the person against whose marriage such protest was entered

Form of
certificate

50 The certificate to be issued by the Marriage Registrar under the provisions of section 41 shall be in the form contained in the second schedule to this Act annexed or to the like effect,

and the 1[Provincial Government] shall furnish to every Marriage Registrar a sufficient number of forms of certificate

Solemniza-
tion of mar-
riage after
issue of
certificate

51 After the issue of the certificate of the Marriage Registrar,

or where notice is required to be given under this Act to the Marriage Registrars for different districts, after the issue of the certificates of the Marriage Registrars for such districts

marriage may, if there be no lawful impediment to the marriage of the parties described in such certificate or certificates, be solemnized between them according to such form and ceremony as they think fit to adopt

But every such marriage shall be solemnized in the presence of some Marriage Registrar (to whom shall be delivered such certificate or certificates as aforesaid) and of two or more credible witnesses besides the Marriage Registrar

And in some part of the ceremony each of the parties shall declare as follows, or to the like effect —

I do solemnly declare that I know not of any lawful impediment why I, A B , may not be joined in matrimony to C D "

And each of the parties shall say to the other as follows or to the like effect — ' I call upon these persons here present to witness that I, A B do take thee C D to be my lawful wedded wife [or husband] '

When mar-
riage not
had with-
in two months
after notice
has been
required

52 Whenever a marriage is not solemnized within two months after the copy of the notice has been entered by the Marriage Registrar, as required by section 40 the notice and the certificate if any issued thereupon and all other proceedings thereupon shall be void

and no person shall proceed to solemnize the marriage nor shall any Marriage Registrar enter the same until new notice has been given and entry made and certificate thereof given at the time and in the manner aforesaid

(Part V—Marriages solemnized by or in the presence of, a Marriage Registrar)

53 A Marriage Registrar before whom any marriage is solemnized under this Part may ask of the persons to be married the several particulars required to be registered touching such marriage

Marriage Registrar may ask for particulars to be registered

54 After the solemnization of any marriage under this Part, the Marriage Registrar present at such solemnization shall forthwith register the marriage in duplicate that is to say in a marriage register book according to the form of the fourth schedule hereto annexed and also in a certificate attached to the marriage register book as a counterfoil

Registration of marriage solemnized under Part V

The entry of such marriage in both the certificate and the marriage register book shall be signed by the person by or before whom the marriage has been solemnized if there be any such person and by the Marriage Registrar present at such marriage whether or not it is solemnized by him and also by the parties married and attested by two credible witnesses other than the Marriage Registrar and person solemnizing the marriage

Every such entry shall be made in order from the beginning to the end of the book and the number of the certificate shall correspond with that of the entry in the marriage register book

55 The Marriage Registrar shall forthwith separate the certificate from the marriage register book and send it at the end of every month to the ¹[Registrar General of Births Deaths and Marriages]

Certificates to be sent monthly to Registrar General Custody of register book

The Marriage Registrar shall keep safely the said register book until it is filled and shall then send it to the ¹[Registrar General of Births Deaths and Marriages] to be kept by him with the records of his office

56 The Marriage Registrars in ²[Indian States] shall send the certificates mentioned in section 54 to such officers as the ³[Central Government] from time to time by notification in the ⁴[Official Gazette] appoints in this behalf ⁵

Officers to whom Registrars in Indian States shall send certificates

¹ S.I. by s. 30 (f) of the Births Deaths and Marriages Registration Act 1875 (6 of 1876) for S. returns to the I.C.

² S.I. by the A.O. for Native States

³ S.I. by the A.O. for C.C.I.C.

⁴ S.I. by the A.O. for Gazette of India

(Part V—Marriages solemnized by, or in the presence of, a Marriage Registrar Part VI—Marriage of Native Christians)

Registrars to ascertain that notice and certificate are understood by Native Christians

57 When any Native Christian about to be married gives a notice of marriage or applies for a certificate from a Marriage Registrar, such Marriage Registrar shall ascertain whether the said Native Christian understands the English language, and, if he does not, the Marriage Registrar shall translate or cause to be translated, such notice or certificate or both of them as the case may be, to such Native Christian into a language which he understands

or the Marriage Registrar shall otherwise ascertain whether the Native Christian is cognizant of the purport and effect of the said notice and certificate

Native Christians to be made to understand declarations

58 When any Native Christian is married under the provisions of this Part, the person solemnizing the marriage shall ascertain whether such Native Christian understands the English language, and, if he does not the person solemnizing the marriage shall, at the time of the solemnization translate or cause to be translated, to such Native Christian into a language which he understands, the declarations made at such marriage in accordance with the provisions of this Act

Registration of marriages between Native Christians

59 The registration of marriages between Native Christians under this Part shall be made in conformity with the rules laid down in section 37 (so far as they are applicable) and not otherwise

PART VI¹

MARRIAGE OF NATIVE CHRISTIANS

On what conditions marriages of Native Christians may be certified

60 Every marriage between Native Christians applying for a certificate shall without the preliminary notice required under Part III be certified under this Part if the following conditions be fulfilled and not otherwise —

- (1) the age of the man intending to be married shall exceed sixteen years and the age of the woman intending to be married shall exceed thirteen years
- (2) neither of the persons intending to be married shall have a wife or husband still living,

¹ As to validation of past marriages solemnized under Part VI between persons of whom one only was a Native Christian and penalty for solemnizing such marriages under Part VI in future see the Marriages Validation Act 1892 (2 of 1892)

(Part VI—Marriage of Native Christians)

(3) in the presence of a person licensed under section 9, and of at least two credible witnesses other than such person, each of the parties shall say to the other—

‘I call upon these persons here present to witness that I,
A B in the presence of Almighty God, and in the
 name of our Lord Jesus Christ, do take thee, *C D*,
 to be my lawful wedded wife [or husband] or
 words to the like effect

Provided that no marriage shall be certified under this Part when either of the parties intending to be married has not completed his or her eighteenth year unless such consent as is mentioned in section 19 has been given to the intended marriage or unless it appears that there is no person living authorized to give such consent

61 When in respect to any marriage solemnized under this Part, the conditions prescribed in section 60 have been fulfilled the person licensed as aforesaid in whose presence the said declaration has been made shall on the application of either of the parties to such marriage and on the payment of a fee of four annas grant a certificate of the marriage Grant of certificate

The certificate shall be signed by such licensed person and shall be received in any suit touching the validity of such marriage as conclusive proof of its having been performed

1[62 (1) Every person licensed under section 9 shall keep in English or in the vernacular language in ordinary use in the district or State in which the marriage was solemnized, and in such form as the Provincial Government] by which he was licensed may from time to time prescribe a register book of all marriages solemnized under this Part in his presence and shall deposit in the office of the Registrar General of Births, Deaths and Marriages for the territories under the administration of the said Provincial Government] in such form and at such intervals as that Government may prescribe, true and duly authenticated extracts from his register book of all entries made therein since the last of those intervals Keeping of register book and deposit of extracts therefrom with Registrar General

¹ S. 14, 15 & 4 of the Indian Christian Marriage Act (1872 Amendment Act 1901 of 1891) for the original s. 62.

² S. 14, 15 & 4 of the A. O. for L. G.

³ For notifications in this regard see the different Local R. and O.

(Part VI—Marriage of Native Christians Part VII.—Penalties)

(2) Where the person keeping the register-book was licensed as regards ¹[an Indian State] by the ²[Central Government], references in sub-section (1) to the ³[Provincial Government] therein mentioned shall be read as references to the ³[Provincial Government] to whose Registrar General of Births, Deaths and Marriages certified copies of entries in registers of births and deaths are for the time being required to be sent under section 24, sub section (2), of the Births, Deaths and Marriages Registration Act, 1886]

VI

63 Every person licensed under this Act to grant certificates of marriage, and keeping a marriage-register-book under section 62, shall, at all reasonable times, allow search to be made in such book, and shall, on payment of the proper fee, give a copy, certified under his hand, of an entry therein

64 The provisions of sections 62 and 63, as to the form of the register-book, depositing extracts therefrom, allowing searches thereof, and giving copies of the entries therein, shall, *mutatis mutandis*, apply to the books kept under section 37

65. This Part of this Act except so much of sections 62 and 63 as are referred to in section 64 shall not apply to marriages between Roman Catholics But nothing herein contained shall invalidate any marriage celebrated between Roman Catholics under the provisions of Part V of Act No XXV of 1864⁴, previous to the twenty-third day of February, 1865

PART VII

PENALTIES

5[66 Whoever for the purpose of procuring a marriage or license of marriage, intentionally,—

(a) where an oath or declaration is required by this Act or by any rule or custom of a Church according to the rites and ceremonies of which a marriage is intended to be

¹ Sub. by the A. O. for "a Native State"

² Sub. by the A. O. for "G. G. in C."

³ Sub. by the A. O. for "L. G."

⁴ Act 25 of 1864 rep. by Act 5 of 1865 which was rep. by this Act

⁵ Sub. by s 5 of the Indian Christian Marriage Act (1872) Amendment Act 1891 (2 of 1891) for original s 66

Searches in register book and copies of entries

Books in which marriages of Native Christians under Part I or Part III are registered

Part VI not to apply to Roman Catholics Saving of certain marriages

False oath, declaration, notice or certificate for procuring marriage

(Part VII —Penalties)

solemnized, such Church being the Church of England or of Scotland or of Rome makes a false oath or declaration, or,

(b) where a notice or certificate is required by this Act, signs a false notice or certificate

shall be deemed to have committed the offence punishable under section 193 of the Indian Penal Code with imprisonment of either description for a term which may extend to three years and, at the discretion of the Court, with fine]

67 Whoever forbids the issue, by a Marriage Registrar of a certificate, by falsely representing himself to be a person whose consent to the marriage is required by law, knowing or believing such representation to be false, or not having reason to believe it to be true, shall be deemed guilty of the offence described in section 205 of the Indian Penal Code Forbidding, by false personation, issue of certificate by Marriage Registrar

1[68 Whoever not being authorized by section 3 of this Act to solemnize marriages, solemnizes or professes to solemnize in the absence of a Marriage Registrar of the district in which the ceremony takes place, a marriage between persons one or both of whom is or are a Christian or Christians, shall be punished with imprisonment which may extend to ten years, or (in lieu of a sentence of imprisonment for seven years or upwards) with transportation for a term of not less than seven years, and not exceeding ten years, solemnizing marriage without due authority

or, if the offender is an European or American with penal servitude according to the provisions of Act XXIV of 1855 *(to substitute penal servitude for the punishment of transportation in respect of European and American convicts)* 2 * * *

and shall also be liable to fine]

69 Whoever knowingly and wilfully solemnizes a marriage between persons one or both of whom is or are a Christian or Christians, at any time other than between the hours of six in the morning and seven in the evening, or in the absence of at least two credible witnesses other than the person solemnizing the marriage, shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine Solemnizing marriage at improper time or without witnesses

1 Suba by s. 6 of the Indian Christian Marriage Act (1872 Am. Amendment Act 1891 (2 of 1891) for the original s. 68.

2 The words 'and to amend the law relating to the removal of such convicts' rep. by the Amending Act 1891 (12 of 1891)

(Part VII —Penalties)

Saving of
marriages
solemnized
under
special
license

This section does not apply to marriages solemnized under special licenses granted by the Anglican Bishop of the Diocese or by his Commissary, nor to marriages performed between the hours of seven in the evening and six in the morning by a Clergyman of the Church of Rome, when he has received the general or special license in that behalf mentioned in section 10

¹[Nor does this section apply to marriages solemnized by a Clergyman of the Church of Scotland according to the rules, rites, ceremonies and customs of the Church of Scotland]

Solemnizing
without
notice or
within
fourteen
days after
notice
marriage
with
minor

70 Any Minister of Religion licensed to solemnize marriages under this Act, who without a notice in writing, or, when one of the parties to the marriage is a minor, and the required consent of the parents or guardians to such marriage has not been obtained, within fourteen days after the receipt by him of notice of such marriage, knowingly and wilfully solemnizes a marriage under Part III, shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine

Issuing
certificate
or
marrying
without
publication
of notice,

71 A Marriage Registrar under this Act, who commits any of the following offences —

(1) knowingly and wilfully issues any certificate for marriage, or solemnizes any marriage, without publishing the notice of such marriage as directed by this Act,

²[(2) after the expiration of two months after the copy of the notice has been entered as required by section 40 in respect of any marriage, solemnizes such marriage,]

(3) solemnizes, without any order of a competent Court authorizing him to do so, any marriage, when one of the parties is a minor, before the expiration of fourteen days after the receipt of the notice of such marriage, or without sending, by the post or otherwise, a copy of such notice to the Senior Marriage Registrar of the district if there be more Marriage Registrars of the district than one, and if he himself be not the Senior Marriage Registrar,

(4) issues any certificate the issue of which has been prohibited, as in this Act provided, by any person authorized to prohibit the issue thereof,

marrying
after
expiry
of notice,
solemnizing
marriage
with minor
within
fourteen
days
without
authority
of Court
or without
sending
copy of
notice,
issuing
certificate
against
authorized
prohibition

¹ Ins by s 7 of the Indian Christian Marriage Act (1872) Amendment Act 1891 (2 of 1891)

² Subs by s 8 (1), *ibid*, for the original cl (2)

(Part VII—Penalties)

shall be punished with imprisonment for a term which may extend to five years, and shall also be liable to fine

72 Any Marriage Registrar knowingly and wilfully issuing any certificate for marriage after the expiration of 1[two months] after the notice has been entered by him as aforesaid,

Issuing certificate after expiry of notice or, in case of minor within fourteen days after notice or against authorized prohibition

or knowingly and wilfully issuing without the order of a competent Court authorizing him so to do any certificate for marriage, where one of the parties intending marriage is a minor before the expiration of fourteen days after the entry of such notice or any certificate the issue of which has been forbidden as aforesaid by any person authorized in this behalf,

shall be deemed to have committed an offence under section 166 of the Indian Penal Code

73 Whoever being authorized under this Act to solemnize a marriage,

Persons authorize 1 to solemnize marriage (other than Clergy of Churches of England Scotland or Rome) -

and not being a Clergyman of the Church of England solemnizing a marriage after due publication of banns or under a license from the Anglican Bishop of the Diocese or a Surrogate duly authorized in that behalf

or not being a Clergyman of the Church of Scotland solemnizing a marriage according to the rules rites ceremonies and customs of that church,

or, not being a Clergyman of the Church of Rome solemnizing a marriage according to the rites rules ceremonies and customs of that church,

knowingly and wilfully issues any certificate for marriage under this Act, or solemnizes any marriage between such persons as aforesaid without publishing, or causing to be affixed the notice of such marriage as directed in Part III of this Act, or after the expiration of two months after the certificate has been issued by him

issuing certificate or marrying without publishing notice or after expiry of certificate for or solemnizing marriage with minor within fourteen

or knowingly and wilfully issues any certificate for marriage, or solemnizes a marriage between such persons when one of the persons intending marriage is a minor, before the expiration of fourteen days after the receipt of notice of such marriage or without sending by the post or otherwise a copy of such notice to the Marriage Registrar or, if

(Part VII—Penalties Part VIII—Miscellaneous)

days after
notice,

there be more Marriage Registrars than one, to the Senior Marriage Registrar of the district,

issuing
certificate
authorizdly
forbidden,

or knowingly and wilfully issues any certificate the issue of which has been forbidden, under this Act, by any person authorized to forbid the issue,

solemnizing
marriage
author redly
forbidden

or knowingly and wilfully solemnizes any marriage forbidden by any person authorized to forbid the same,

shall be punished with imprisonment for a term which may extend to four years, and shall also be liable to fine

Unlicensed
person
granting
certificate
pretending
to be
licensed

74 Whoever, not being licensed to grant a certificate of marriage under Part VI of this Act, grants such certificate intending thereby to make it appear that he is so licensed, shall be punished with imprisonment for a term which may extend to five years, and shall also be liable to fine

1[Whoever, being licensed to grant certificates of marriage under Part VI of this Act without just cause refuses, or wilfully neglects or omits, to perform any of the duties imposed upon him by that Part shall be punished with fine which may extend to one hundred rupees]

Destroying
or falsify
ing register
books

75 Whoever by himself or another, wilfully destroys or injures any register book or the counterfoil certificates thereof, or any part thereof, or any authenticated extract therefrom,

or falsely makes or counterfeits any part of such register-book or counterfoil certificates

or wilfully inserts any false entry in any such register book or counterfoil certificate or authenticated extract,

shall be punished with imprisonment for a term which may extend to seven years and shall also be liable to fine

Limitation
of prosecu
tions under
Act

76 The prosecution for every offence punishable under this Act shall be commenced within two years after the offence is committed

PART VIII

MISCELLANEOUS

What
matters
need not
be proved
in respect
of marriage
in accord
ance with
Act

77 Whenever any marriage has been solemnized in accordance with the provisions of sections 4 and 5, it shall not be void merely on account of any irregularity in respect of any of the following matters, namely —

(1) any statement made in regard to the dwelling of the persons married, or to the consent of any person whose consent to such marriage is required by law

¹ Ins. by s. 9 of the Indian Christian Marriage Act (1872) Amendment Act 1891 (2 of 1891)

(Part VIII—Miscellaneous)

- (2) the notice of the marriage
- (3) the certificate or translation thereof
- (4) the time and place at which the marriage has been solemnized
- (5) the registration of the marriage

78 Every person charged with the duty of registering any marriage, who discovers any error in the form or substance of any such entry, may, within one month next after the discovery of such error, in the presence of the persons married, or, in case of their death or absence, in the presence of two other credible witnesses, correct the error, by entry in the margin, without any alteration of the original entry, and shall sign the marginal entry, and add thereto the date of such correction, and such person shall make the like marginal entry in the certificate thereof

Corrections
of errors

And every entry made under this section shall be attested by the witnesses in whose presence it was made

And in case such certificate has been already sent to the ¹[Registrar General of Births, Deaths and Marriages], such person shall make and send in like manner a separate certificate of the original erroneous entry, and of the marginal correction therein made

79 Every person solemnizing a marriage under this Act, and hereby required to register the same,

Searches
and copies
of entries

and every Marriage Registrar or ¹[Registrar General of Births, Deaths and Marriages] having the custody for the time being of any register of marriages, or of any certificate, or duplicate or copies of certificate, under this Act,

shall, on payment of the proper fees, at all reasonable times, allow searches to be made in such register, or for such certificate, or duplicate, or copies, and give a copy under his hand of any entry in the same

80 Every certified copy, purporting to be signed by the person entrusted under this Act with the custody of any marriage register or certificate, or duplicate, required to be kept or delivered under this Act, of an entry of a marriage in such register, or of any such certificate or duplicate, shall be received as evidence of the marriage purporting to be so entered, or of the facts purporting to be so certified therein, without further proof of such register or certificate or duplicate, or of any entry therein, respectively, or of such copy

Certified
copy of
entry in
marriage
register
etc. to be
received

¹ Subs. by s. 30 (b) of the Births, Deaths and Marriages (Registration) Act, 1926 (6 of 1926) for "Secretary to the L. C." and "Secretary to a L. C.", respectively

(Part VIII —Miscellaneous)

Certificates
of certain
marriages
for Secre-
tary of
State

1[81 The Registrar General of Births, Deaths and Marriages and the officers appointed under section 56 shall, at the end of every quarter in each year, select, from the certificates of marriages forwarded to them, respectively, during such quarter, the certificates of the marriages of which 2[the Government by whom he was appointed] may desire that evidence shall be transmitted to England, and shall send the same certificates, signed by them respectively, to the Secretary of State for India]

Provincial
Government
to prescribe
fees

82 Fees shall be chargeable under this Act for—

receiving and publishing notices of marriages;

issuing 3[certificates for marriage] by Marriage Registrars, and registering marriages by the same,

entering protests against, or prohibitions of, the issue of 4[certificates for marriage] by the said Registrars;

searching register books or certificates, or duplicates of copies thereof,

giving copies of entries in the same under sections 63 and 79

The 5[Provincial Government] shall fix the amount of such fees respectively,

and may from time to time vary or remit them either generally or in special cases, as to it may seem fit

Power to
make rules

83 The 5[Provincial Government] may make rules⁶ in regard to the disposal of the fees mentioned in section 82, the supply of register-books, and the preparation and submission of returns of marriages solemnized under this Act

Power to
prescribe
fees and
rules for
Indian
States

84 The powers conferred on the 5[Provincial Government] by sections 82 and 83 7[shall], so far as regards 8[Indian States], be exercised by the 9[Central Government]

¹ Subs by s 2 of the Indian Christian Marriage (Amendment) Act, 1911 (13 of 1911), for original s 81

² Subs by the A O for the G G in C "

³ Subs by s 3 and Sch II of the Repealing and Amending Act, 1903 (1 of 1903) for 'certificate of marriages

⁴ Subs for 'marriage certificates' *ibid*

⁵ Subs by the A O for L G "

⁶ For rules made under s 83 by different Govts see the different Local Rules and Orders

⁷ Subs by the A O for may

⁸ Subs by the A O for Native States "

⁹ Subs by the A O for 'G G in C "

(Part VIII —Miscellaneous.)

85 The ¹[Provincial Government] may, by notification in the Official Gazette, declare who shall, in any place to which this Act applies, be deemed to be the District Judge

Power to declare who shall be District Judge

²[86 (1) The powers and functions exercisable by the ³[Central Government] under sections 6, 8, 9, 47, 48, 56 and 84 shall so far as regards any ⁴[Indian State] which is within the political charge of a ¹[Provincial Government] be ⁵[exercisable] by that ¹[Provincial Government]. The exercise under this section by any ¹[Provincial Government] of powers and functions under sections 6, 8, 9 and 56 shall be by notification in the local Official Gazette

Powers and functions exercisable as regards Indian States.

(2) The powers and functions exercisable under this Act by the ³[Central Government] may be delegated to and exercised by such officers as ⁶[it] may from time to time appoint in this behalf]

87. Nothing in this Act applies to any marriage performed by any Minister, Consul or Consular Agent between subjects of the State which he represents and according to the laws of such State

Saving of Consular marriages

88 Nothing in this Act shall be deemed to validate any marriage which the personal law applicable to either of the parties forbids him or her to enter into

Non validation of marriages within prohibited degrees

¹ Subs by the A O for 'L G '

² Subs by s. 2 and Sch I of the Devolution Act, 1920 (38 of 1920) for the original s 86

³ Subs by the A O for "G G in C "

⁴ Subs by the A O for "Native State"

⁵ Subs by the A O for "exercised".

⁶ Subs by the A O for "he"

(Schedule III —Form of Register of Marriages)

SCHEDULE III

(See sections 28 and 31¹)

FORM OF REGISTER OF MARRIAGES

Quarterly Returns

of

MARRIAGES

for

The Archdeaconry of

{ Calcutta
Madras
Bombay

I, _____, Registrar of the Archdeaconry of { Calcutta,
Madras,
Bombay, }

do hereby certify that the annexed are correct copies of the originals and Official Quarterly Returns of Marriage within the Archdeaconry

of { Calcutta
Madras,
Bombay } as made and transmitted to me for the quarter com-
mencing the _____ day of _____ ending the
day of _____ in the year of Our Lord

[Signature of Registrar]

Registrar of the Archdeaconry of { Calcutta
Madras
Bombay

MARRIAGES solemnized at { Allahabad,
Barrackpore
Bareilly,
Calcutta, etc , etc

When Married			Names of Parties		Age	Condition	Rank or profes- sion	Residence at the time of mar- riage	Father's name and surname	By banns or license	Signatures of the parties	Signatures of two or more witnesses pre- sent.	Signature of the person solemn- izing the marriage
Year	Month	Day	Christian.	Surname									

¹ Subs. by the Second Schedule of the Amending Act, 1901 (12 of 1901) for the original reference

(Schedule IV.—Marriage Register Book.)

SCHEDULE IV.

(See sections 32 and 54)

MARRIAGE REGISTER BOOK.

Number	When Married	Names of Parties.		Age	Condition	Rank or profession	Residence at the time of marriage	Father's name and surname
		Christian name	Surname					
	Day. Month. Year.							
		James	White	26 years	W ^r Joiner	Carpenter	Agra	William White.
		Martha	Duncan	17 years	Spinster		Agra	John Duncan

Married in the

This marriage was solemnized between us
 { James White, } in the presence of us { John Smith, }
 { Martha Duncan, } { John Green }

(Schedule III —Form of Register of Marriages)

SCHEDULE III

(See sections 28 and 31¹)

FORM OF REGISTER OF MARRIAGES

Quarterly Returns

of

MARRIAGES

for

The Archdeaconry of {
Calcutta
Madras
Bombay

I, _____, Registrar of the Archdeaconry of {
Calcutta,
Madras,
Bombay, }

do hereby certify that the annexed are correct copies of the originals and Official Quarterly Returns of Marriage within the Archdeaconry

of {
Calcutta
Madras
Bombay } is made and transmitted to me for the quarter com-
mencing the _____ day of _____ ending the _____
day of _____ in the year of Our Lord

[Signature of Registrar]

Registrar of the Archdeaconry of {
Calcutta
Madras
Bombay

MARRIAGES solemnized at {
Allahabad
Barrackpore
Bareilly,
Calcutta, etc., etc

When Married			Names of Parties		Age	Condition	Rank or profes- sion	Residence at the time of mar- riage	Father's name and surname	By whom or license	Signatures of the parties	Signatures of two or more witnesses pre- sent	Signature of the person solemn- izing the marriage
Year	Month	Day	Christian.	Surname									

¹ Subs. by the Second Schedule of the Amending Act 1891 (10 of 1891) for the original reference

(Schedule IV—Marriage Register Book)

SCHULDULE IV

(See sections 32 and 54)

MARRIAGE REGISTER BOOK

Number	When Married	Names of Parties		Age	Con dition	Rank or profession	Residence at the time of marriage	Father's name and surname
		Christian name	Surname					
	Day Month Year							
		Jan ea	White	25 years	W r o e r	Carpenter	Agra	William White
		Marl n	Duncan	17 years	Spinner		Agra	John Duncan

Married in the

This marriage was solemnized between us

James White, } in the presence of us { *John Smith,*
Martha Duncan, } *John Green*

(Schedule IV.—Marriage Register Book)

CERTIFICATE OF MARRIAGE

Number	When Married		Names of Parties		Age.	Condition	Rank or profession.	Residence at the time of marriage.	Father's name and surname
	Day	Month	Year	Christian name	Surname				
				James	White	26 years	Widower	Agra	William White
				Martha	Duncan	17 years	Spinster	Agra	John Duncan

Married in the

This marriage was solemnized between us

{ James White, } in the presence of us { John Smith }
 { Martha Duncan, } { John Green }

SCHEDULE I —[ENACTMENTS REPEALED] Rep by the
Repealing Act, 1938 (I of 1938) s 2 and Sch

THE MADRAS CIVIL COURTS ACT 1873

CONTENTS

Preamble

PART I

PRELIMINARY

SECTIONS

- 1 Short title
- Local extent
- Commencement.
- 2 [*Repealed*]

PART II

ESTABLISHMENT AND CONSTITUTION OF CIVIL COURTS

- 3 Number of District Courts
- 3 A Appointment of Additional District Judges
- 4 Number of Subordinate Judges and District Munsifs
- 4-A Appointment of Additional Subordinate Judges and Additional District Munsifs
- 5 Court's locality
- 6 and 7 [*Repealed*]
- 8 District Courts Subordinate Judges and District Munsifs
- 9 Seal of Court

PART III

JURISDICTION

SECTIONS

- 10 Local limits of jurisdiction of District Court or Subordinate Judge
- 11 Local jurisdiction of District Munsifs
- 12 *Jurisdiction of District Judge or Subordinate Judge in original suits*

Jurisdiction of District Munsif

- 13 Appeals from decrees of District Courts

Appellate jurisdiction of District Court

Appellate jurisdiction of Subordinate Judge

Disposal of appeal by District Judge

- 14 Valuation of suits for immovable property
 - 15 Power to require witness or party to make oath or affirmation
 - 16 Law administered by Courts to Natives
 - 17 Judges not to try suits in which they are interested, nor to try appeals from decrees passed by them in other capacities
- Mode of disposing of such suits and appeals

PART IV.

MISCONDUCT OF JUDGES

SECTIONS

18 to 21 [*Repealed*]

PART V

MINISTERIAL OFFICERS

22 and 23 [*Repealed*]

24 Duties of Ministerial Officers

24 A [*Repealed*]

PART VI

MISCELLANEOUS

25 Temporary discharge of duties of District Judge

26 [*Repealed*]

27 District Judge to control Civil Courts of district

28 Investiture of Subordinate Judge with Small Cause jurisdiction
Investiture of District Munsif with similar jurisdiction.

29 Exercise by Subordinate Judge of jurisdiction of District Judge
in certain proceedings

30 Vacation

SCHEDULE — [*Repealed*]

Part I—Preliminary Part II—Establishment and Constitution of Civil Courts)

ACT No III OF 1873¹

[21st January, 1873]

An Act to consolidate and amend the law relating to the Civil Courts of the Madras Presidency subordinate to the High Court

Preamble WHEREAS it is expedient to consolidate and amend the law relating to the Civil Courts of the Madras Presidency subordinate to the High Court It is hereby enacted as follows—

PART I

PRELIMINARY

Short title 1 This Act may be called the Madras Civil Courts Act 1873

Local extent It extends to all the territories 2 * * * * under the Government of the Governor of Fort St George in Council except the tracts respectively under the jurisdiction of the Agents for Ganjam and Vizagapatam,

Commencement and it shall come into force on the first day of March 1873

2 [*Repeal of certain enactments*] *Rep by the Repealing Act 1873 (XII of 1873)*

PART II

ESTABLISHMENT AND CONSTITUTION OF CIVIL COURTS

Number of District Courts 3 The number of District (heretofore designated Zila) Courts to be established or continued under this Act shall be fixed and may from time to time be altered by the 3[Provincial Government]

* * * * *

Appointment of Additional District Judges 5[3-A When in the opinion of the High Court, the state of business pending before the Judge of any District Court (hereinafter called the District Judge) so requires the 3[Provincial Government] may appoint one or more Additional District Judges to that Court for such period as they may deem necessary

¹ For Statement of Objects and Reasons see Gazette of India 1873 Pt V, p 173 for report of the Select Committee see *ibid* 1872 Pt V p 695 for Proceedings in Council relating to the Bill see *ibid* Supplement 1870 p 900 and 1873 pp 3 16 and 153

² The words for the time being rep by the 10

³ Subs by the A O for L G

⁴ The words Provided that no increase to the number of such Courts shall be made by such Govt without the previous sanction of the G G in C rep by the Decentralization Act 1914 (4 of 1914) s 2 and Sch Pt I

⁵ Ins by the Madras Civil Courts (Amendment) Act 1931 (Mad 2 of 1931) s 2

(Part II — Establishment and Constitution of Civil Courts)

The Additional District Judges so appointed shall discharge all or any of the functions of the District Judge under this Act or any other law for the time being in force which the District Judge may assign to them and, in the discharge of those functions, they shall exercise the same powers as the District Judge]

4 The number of Subordinate Judges and District Munsifs to be appointed under this Act for each district, shall be fixed, and may from time to time be altered, by the ¹[Provincial Government]

Number of
Subordinate
Judges and
District
Munsifs

2* * * * *

3[The ¹[Provincial Government] may after consultation with the High Court, fix and from time to time vary by notification the number of Subordinate Judges to be appointed for a Subordinate Judge's Court or the number of District Munsifs to be appointed for a District Munsifs Court]

[4-A. When more than one Subordinate Judge is appointed to a Subordinate Judge's Court or more than one District Munsif to a District Munsifs Court one of the Subordinate Judges or the District Munsifs shall be appointed the Principal Subordinate Judge or Principal District Munsif and the others Additional Subordinate Judges or Additional District Munsifs as the case may be

Appointment
of Additional
Subordinate
Judges and
Additional
District
Munsifs

Each of the Judges appointed to a Subordinate Judge's Court or a District Munsifs Court may exercise all or any of the powers conferred on the Court by this Act or any other law for the time being in force

Subject to the general or special orders of the District Judge the Principal Subordinate Judge or the Principal District Munsif may from time to time make such arrangements as he thinks fit for the distribution of the business of the Court among the various Judges thereof]

5 The place at which any Court under this Act shall be held may be fixed and may from time to time be altered

Court's
locality

in the case of a District Court or a Subordinate Judge's Court,
by the ¹[Provincial Government],

in the case of a District Munsifs Court by the High Court

⁵[The places fixed for any Court under this section shall be deemed to be within the local jurisdiction of that Court]

¹ Subs. by the A. O. for 'L. G.'

² The words 'Provided that no addition to the number of such officers shall be made by such Govt. without the previous sanction of the C. C. in C.' rep. by the Decentralization Act 1914 (4 of 1914) s. 2 and Sch. Pt. I

³ Ins. by the Madras Civil Courts (Amendment) Act 1925 (Mad. 3 of 1925),

s. 2

⁴ Ins. by s. 3 *ibid*

⁵ Ins. by the Madras Civil Courts Act 1905 (21 of 1905), s. 2

(Part II.—Establishment and Constitution of Civil Courts Part III—Jurisdiction)

16. [Appointment to vacancy in office of District Judge or Subordinate Judge] Rep by the A O

17. [Appointment to vacancy in office of District Munsif Publication of appointments Annulment of appointments] Rep by the A. O.

8. The present Zila Courts, Principal Sadr Amins, and District Munsifs, shall be respectively the first "District Courts," "Subordinate Judges," and "District Munsifs" under this Act

9. Every Court under this Act shall use a seal of such form and dimensions as are, for the time being, prescribed by the ²[Provincial Government].

PART III

JURISDICTION

10. The ²[Provincial Government] shall fix and may from time to time vary, the local limits of the jurisdiction of any ³[District Court or Subordinate Judge's Court] under this Act

4 * * * * *

The present local limits of the jurisdiction of every Civil Court (other than the High Court) shall be deemed to have been fixed under this Act

11. The High Court shall fix and may from time to time modify, the local jurisdiction of District Munsifs

5 * * * * *

12. The jurisdiction of a District Judge or a Subordinate Judge extends, subject to the rules contained in the ⁶Code of Civil Procedure, to all original suits and proceedings of a civil nature

The jurisdiction of a District Munsif extends to all like suits and proceedings, not otherwise exempted from his cognizance, of which the amount or value of the subject matter does not exceed ⁷[three thousand] rupees

¹ See now the Govt of India Act, 1935, ss 253 and 254

² Subs by the A O for 'L G'

³ Subs by the Madras Civil Courts (Amendment) Act, 1925 (Mad 3 of 1925), s 4 for 'District Judge or Subordinate Judge'

⁴ Proviso rep by s 4 *ibid*

⁵ The second paragraph of s 11 which was added by s 3 of the Madras Civil Courts Act 1885 (21 of 1885) was rep by s 5 of the Madras Civil Courts (Amendment) Act, 1925 (Mad 3 of 1925)

⁶ See now the Code of Civil Procedure 1908 (5 of 1908)

⁷ Subs by the Madras Civil Courts (Amendment) Act, 1916 (Mad 3 of 1916), s 2, for 'two thousand five hundred'

District
Courts,
Subordinate
Judges and
District
Munsifs

Seal of
Court

Local limits
of jurisdic-
tion of
District
Court or
Subordinate
Judge

Local
jurisdiction
of District
Munsifs

Jurisdiction
of District
Judge or
Subordinate
Judge in
original
suits

Jurisdiction
of District
Munsif

(Part III — Jurisdiction)

13 Regular or special appeals ¹ * shall, when such appeals are allowed by law, lie from the decrees and orders of a District Court to the High Court

Appeals from decrees of District Courts
Appellate jurisdiction of District Court

Appeals from the decrees and orders of Subordinate Judges and District Munsifs shall, when such appeals are allowed by law, lie to the District Court except when the amount or value of the subject-matter of the suit exceeds rupees five thousand, in which case the appeal shall lie to the High Court

Provided that, whenever a Subordinate Judge's Court is established in any district at a place remote from the station of the District Court the High Court may, with the previous sanction of the ²[Provincial Government] direct that appeals from the decrees or orders of District Munsifs within the local limits of the jurisdiction of such Subordinate Judge be preferred in the Court of the latter

Appellate jurisdiction of Subordinate Judge.

Provided also, that the District Judge may remove to his own Court, from time to time appeals so preferred and dispose of them himself, or may subject to the orders of the High Court refer any appeals from the decrees and orders of District Munsifs preferred in the District Court to any Subordinate Judge within the district

Disposal of appeal by District Judge

14 When the subject-matter of any suit or proceeding is land, a house or a garden its value shall for the purposes of the jurisdiction conferred by this Act be fixed in manner provided by the Court Fees Act 1870 section 7, clause v

Valuation of suits for immovable property

15 Every Court under this Act may require a witness or party to any suit or other proceeding pending in such Court to make such oath or affirmation as is prescribed by the law for the time being in force

Power to require witness or party to make oath or affirmation

16 Where in any suit or proceeding it is necessary for any Court under this Act to decide any question regarding succession inheritance marriage or caste or any religious usage or institution,

Law administered by Courts to Natives

(a) the Muhammadan law in cases where the parties are Muhammadans and the Hindu law in cases where the parties are Hindus or

(b) any custom (if such there be) having the force of law and governing the parties or property concerned, shall form the rule of decision unless such law or custom has, by legislative enactment been altered or abolished

¹ The words "or appeals under Madras Regulation 11 of 1837 s 9, rep by the Amending Act 1891 (12 of 1891)"

² As in the A. O. for I. C.

³ This section is rep. in local areas to which rules under s 3 of the Courts Valuation Act 1837 (" of 1837) apply see s 6 of that Act

⁴ The provisions of this section have been repealed in so far as they are inconsistent with the provisions of the Muslim Personal Law (Shariat) Application Act 1937 (25 of 1937) see s 6 of that Act

(Part III—Jurisdiction Part IV—Misconduct of Judges Part
V—Ministerial Officers)

(c) In cases where no specific rule exists, the Court shall act according to justice equity, and good conscience

Judges not to try suits in which they are interested, nor to try appeals from decrees passed by them in other capacities

17 No District Judge, Subordinate Judge or District Munsif shall try any suit to or in which he is a party or personally interested, or shall adjudicate upon any proceeding connected with, or arising out of, such suit

No District Judge or Subordinate Judge shall try any appeal against a decree or order passed by himself in another capacity

Mode of disposing of such suits and appeals

When any such suit proceeding or appeal comes before any such officer he shall report the circumstances to the Court to which he is immediately subordinate

The superior Court shall thereupon dispose of the case in the manner prescribed by the ¹Code of Civil Procedure, section 6

Nothing in the last preceding clause of this section shall be deemed to affect the extraordinary original civil jurisdiction of the High Court

PART IV

[Misconduct of Judges] Rep by the A O

PART V

MINISTERIAL OFFICERS

²² [Appointment, suspension or removal of Ministerial Officers of District Courts] Rep by the A. O

²³ [Appointment etc, of Ministerial Officers of Subordinate Courts] Rep by the A O

Duties of Ministerial Officers

³[²⁴ The Ministerial Officers of a Court shall perform such duties as may from time to time be imposed upon them by the presiding officer of the Court]

^{224-A} [Transfer of Ministerial Officers] Rep by the A O

¹ See now the Code of Civil Procedure 1908 (Act 5 of 1908) s 24

² The appointment suspension removal and transfer of ministerial officers of Civil Courts are now regulated under s 241 of the G of I Act 1935

³ Subs by the A O for the original section

(Part VI.—Miscellaneous.)

PART VI

MISCELLANEOUS

25. In the event of the death of the District Judge, or of his being incapacitated by illness or otherwise for the performance of his duties,

Temporary discharge of duties of District Judge

or of his absence from the station in which his Court is held,

¹[the Senior Additional District Judge or the Additional District Judge as the case may be or if there is no Additional District Judge], the senior Subordinate Judge of the District shall, without interruption to his ordinary duties, assume charge of the District Judge's office, and shall discharge such of the current duties thereof as are connected with the filing of suits and appeals, the execution of processes and the like,

and shall continue in charge of the office until the same is resumed or assumed by an officer duly appointed thereto

26 [District Judge may nominate to vacancy in office of District Munsif] Rep by the A. O

27. Subject to the other provisions of this Act and to the rules for the time being in force and prescribed by the High Court in this behalf the general control over all the Civil Courts under this Act in any district is vested in the District Judge

District Judge to control Civil Courts of District

28 The ²[High Court] may by notification in the official Gazette, invest within such local limits as it shall from time to time appoint,

Investiture of Subordinate Judge with Small Cause jurisdiction

any ³[District or] Subordinate Judge with the jurisdiction of a Judge of a Court of Small Causes for the trial of suits cognizable by such Courts up to the amount of rupees ⁴[one thousand].

¹ Ins 1 by the Madras Civil Courts (Amendment) Act 1931 (Mad 2 of 1931) s. 6.

² Sub 1 by the Decentralization Act 1914 (4 of 1914) s. 2 and Sch., Pt. I, for 'L. G.'

³ Ins 1 by the Madras Civil Courts Act 1835 (21 of 1835), s. 5.

⁴ Sub 1 by the Madras Civil Courts (Second Amendment) Act 1906 (12 of 1906), s. 2 for 'five hundred'.

(Part VI.—Miscellaneous. Schedule—Enactments Repealed.)

Investiture
of District
Munsif with
similar
jurisdiction

and any District Munsif with the same jurisdiction up to the amount of 1* * * * rupees 2[three hundred],

and may, by like notification, whenever it thinks fit, withdraw such jurisdiction from the 3[District or] Subordinate Judge or Munsif so invested.

Exercise by
Subordinate
Judge of
jurisdiction
of District
Judge in
certain pro-
ceedings

4[29. (1) The High Court may, by general or special order, authorize any Subordinate Judge to take cognizance of, or any District Judge to transfer to any Subordinate Judge under his control, any proceedings under the Indian Succession Act, 1925, which cannot be disposed of by District Delegates

XXX
1925.

(2) The District Judge may withdraw any such proceedings taken cognizance of by, or transferred to, a Subordinate Judge and may either himself dispose of them or transfer them to a Court under his control competent to dispose of them

(3) Notwithstanding anything contained in section 13, proceedings taken cognizance of by, or transferred to, a Subordinate Judge under the provisions of this section shall be disposed of by him subject to the law applicable to like proceedings when disposed of by the District Judge]

Vacation

30. The High Court may permit the Civil Courts under its control to adjourn from time to time for periods not exceeding in the aggregate two months in each year

SCHEDULE.—[Enactments repealed.] Repealed by the Repealing Act, 1873 (XII of 1873).

1 The words 'rupees fifty or on the recommendation of the High Court up to any amount not exceeding' rep by the Decentralization Act, 1914 (4 of 1914), s 2 and Sch, Pt I

2 Sub s 1v the Madras Civil Courts (Second Amendment) Act 1926 (18 of 1926), s 2, for 'two hundred'

3 Ins by the Madras Civil Courts Act, 1865 (21 of 1865), s 5

4 Ins by the Madras Civil Courts (Amendment) Act, 1926 (14 of 1926) s 2

(Preliminary)

THE GOVERNMENT SAVINGS BANKS ACT, 1873

ACT No V OF 1873¹

[28th January, 1873.]

An Act to amend the law relating to Government Savings Banks

WHEREAS it is expedient to amend the law relating to the payment of deposits in Government Savings Banks, It is hereby enacted as follows —

Preliminary

1. This Act may be called the Government Savings Banks Act, Short title 1873

It extends to the whole of British India

Local extent.

2. * * * *

2. [Repeal of Act XXVI of 1855] Rep by the Repealing Act, 1873 (XII of 1873).

3. In this Act—

Interpretation clause

“depositor” means a person by whom or on whose behalf, money has been heretofore, or shall be hereafter, deposited in a Government Savings Bank, and “deposit” means money so deposited

3[“Secretary” means, in the case of a Post Office Savings Bank, the Postmaster-General appointed for the area in which the Savings Bank is situate]

4[“minor” means a person who is not deemed to have attained his majority under the Indian Majority Act, 1875]

¹ For the Statement of Objects and Reasons to the Bill which was based upon the Trustee Savings Banks Act 1863 (26 and 27 Vict c 87), s 30 see Gazette of India 1872 Pt V p 575 for Proceedings in Council, see *ibid*, 1872, Supplement pp 727, 743 *ibid*, 1873 Supplement pp 150 and 221

This Act has been declared to be in force in the—

Sonthal Parganas by the Sonthal Parganas Settlement Regulation (3 of 1872), s 3,

Khondmals District by the Khondmals Laws Regulation, 1936 (4 of 1936), s 3 and Sch., and

Angul District by the Angul Laws Regulation, 1936 (5 of 1936) s 3 and Sch.

It has been declared, by notification under s 3 (a) of the Scheduled Districts Act, 1874 (14 of 1874) to be in force in the following Scheduled Districts namely— the Districts of Hazaribagh, Lohardaga and Manbhum, and Pargana Dhalbhum and the Kolhan in the District of Singhbhum see Gazette of India 1931 Pt I, p 504 The District of Lohardaga (now called the Ranchi District, see Calcutta Gazette 1899, Pt I, p 44) included at this time the District of Palamu, separated in 1864

² Commencement cl rep by the Repealing Act, 1874 (16 of 1874)

³ Subs. by the Government Savings Banks (Amendment) Act, 1923 (15 of 1923), s 2 for the original definition

⁴ Subs. by the Amending Act, 1915 (13 of 1915), s 2 and Sch., for the original definition

*(Deposits belonging to the Estates of deceased Persons)**Deposits belonging to the Estates of deceased Persons*

Payment on
death of
depositor

¹4 If a depositor dies and probate of his will or letters of administration of his estate or a certificate granted under the Succession Certificate Act 1889 is not within three months of the death of the depositor produced to the Secretary of the Government Savings Bank in which the deposit is then—

(a) if the deposit does not exceed three thousand rupees the Secretary may pay the same to any person appearing to him to be entitled to receive it or to administer the estate of the deceased or

(b) if the deposit does not exceed one hundred rupees any officer employed in the management of a Government Savings Bank who is empowered in the behalf by a general or special order of the ²[Central Government], may subject to any general or special orders of the Secretary in this behalf pay the deposit to any person appearing to him to be entitled to receive it or to administer the estate]

Payment to
be a dis-
charge
saving of
right of
executor

5 Such payment shall be a full discharge from all further liability in respect of the money so paid

But nothing herein contained precludes any executor or administrator or other representative of the deceased from recovering from the person receiving the same the amount remaining in his hands after deducting the amount of all debts or other demands lawfully paid or discharged by him in due course of administration

Saving of
right of
creditor

And any creditor or claimant against the estate of the deceased may recover his debt or claim out of the money paid under this Act or ³* * Act No XXXVI of 1880 ⁴ to any person and remaining in his hands unadministered in the same manner and to the same extent as if the latter had obtained letters of administration of the estate of the deceased

Security for
due adminis-
tration

6 The Secretary of any such Bank ⁵[or any officer empowered under section 4] may take such security as he thinks necessary from any person to whom he pays any money under section 4 for the due administration of the money so paid

and he may assign the said security to any person interested in such administration

¹ Substituted by the Government Savings Banks (Amendment) Act 1923 (16 of 1923)
² 3 for the original section

³ Substituted by the A. O. for G. O. in C.

⁴ The words "the said" replaced by the Amendment Act 1891 (12 of 1891) s. 2 and
Sect. I

⁵ Replaced by s. 2 of this Act

⁶ Inserted by Act 16 of 1923 s. 4

(Deposits belonging to the Estates of deceased Persons Deposits belonging to Minors)

7. For the purpose of ascertaining the right of the person claiming to be entitled as aforesaid, the Secretary of any such Bank ¹[or any officer empowered under section 4] may take evidence on oath or affirmation according to the law ² for the time being relating to oaths and affirmations Power to administer oath

Any person who upon such oath or affirmation makes any statement which is false, and which he either knows or believes to be false or does not believe to be true shall be deemed guilty of an offence under section 193 of the Indian Penal Code Penalty for false statements

8 Where the amount of the deposit belonging to the estate of a deceased depositor does not exceed ³[three thousand rupees] such amount shall be excluded in computing the fee chargeable, under the Court-fees Act, 1870, on the probate or letters of administration, or certificate (if any), granted in respect of his property ⁴ Deposit when excluded in computing court fees.

Provided that the person claiming such probate or letters or certificate shall exhibit to the Court authorized to grant the same a certificate of the amount of the deposit in any Government Savings Bank belonging to the estate of the deceased. Such certificate shall be signed by the Secretary of such Bank and the Court shall receive it as evidence of the said amount.

9 Nothing hereinbefore contained applies to money belonging to the estate of any European officer non-commissioned officer or soldier dying in Her Majesty's service in India or of any European who at the time of his death, was a deserter from the said service Act not to apply to deposits belonging to estates of European soldiers or deserters

Deposits belonging to Minors

10 Any deposit made by or on behalf of any minor may be paid to him personally if he made the deposit or to his guardian for his use if the deposit was made by any person other than the minor, together with the interest accrued thereon Power of deposit to minor or guardian

The receipt of any minor or guardian for money paid to him under this section shall be a sufficient discharge therefor.

11 All payments of deposits heretofore made to minors or their guardians by any Secretary of a Government Savings Bank shall be deemed to have been made in accordance with law Regulation of like payments heretofore made

¹ Ins. by the Government Savings Bank (Amendment) Act 1923 (15 of 1923) s. 3

² See the Indian Oaths Act 1873 (10 of 1873)

³ Subs. for "one thousand rupees" by the Government Savings Banks (Amendment) Act 1917 (17 of 1917) s. 2

⁴ Cf. the Savings Bank Act 1823 (9 Geo. 4 c. 92) s. 40 now rep. by the Savings Banks Act 1863 (26 and 27 Vict. c. 87)

(Deposits belonging to Lunatics Deposits made by Married Women.
Rules)

Deposits belonging to Lunatics

Payment of
deposits
belonging
to lunatics

12 If any depositor becomes insane or otherwise incapable of managing his affairs

and if such insanity or incapacity is proved to the satisfaction of the Secretary of the Bank in which his deposit may be

such Secretary may from time to time, make payments out of the deposit to any proper person

and the receipt of such person for money paid under this section, shall be a sufficient discharge therefor

Where a committee or manager of the depositor's estate has been duly appointed nothing in this section authorizes payments to any person other than such committee or manager

Deposits made by Married Women

Payment of
married
women's
deposits

13 Any deposit made by or on behalf of a married woman or by or on behalf of a woman who afterwards marries may be paid to her whether or not the Indian Succession Act 1865¹ section 4, applies to X of her marriage and her receipt for money paid to her under this section shall be a sufficient discharge therefor

Rules

Rules
regulating
certificates
under
section 8,
and pay-
ments under
section 10
12 or 13.

14 All certificates under section 8 and all payments under section 10, section 12 or section 13 shall be respectively granted and made by the Secretary of the Bank, subject to such rules consistent with this Act as the²[Central Government] may from time to time prescribe³

¹ See now the Indian Succession Act 1925 (39 of 1925)

² Subs. by the A. O. for 'G. G.' in C.

³ For such rules see Gazette of India 1895 Pt. I p. 406 and *ibid* 1897, Supplement p. 153

THE NORTHERN INDIA CANAL AND DRAINAGE
ACT, 1873

CONTENTS

PREAMBLE

PART I

PRELIMINARY

SECTIONS

- 1 Short title
Local extent
- 2 [*Repealed*]
- 3 Interpretation clause
- 4 Power to appoint officers

PART II

OF THE APPLICATION OF WATER FOR PUBLIC PURPOSES

- 5 Notification to issue when water supply is to be applied for public purposes
- 6 Powers of Canal officer
- 7 Notice as to claims for compensation
- 8 Damage for which compensation shall not be awarded matters in respect of which compensation may be awarded
- 9 Limitation of claims
- 10 Enquiry into claims and amount of compensation
- 11 Abatement of rent on interruption of water supply
- 12 Enhancement of rent on restoration of water supply
- 13 Compensation when due
Interest

PART III

OF THE CONSTRUCTION AND MAINTENANCE OF WORKS

- 14 Power to enter and survey, etc
Power to clear land
Power to inspect and regulate water supply
Notice of intended entry into houses
Compensation for damage caused by entry

SECTIONS.

- 15 Power to enter for repairs and to prevent accidents
Compensation for damage to land
- 16 Application by persons desiring to use canal water
Contents of application
Liability of applicants for cost of works
Recovery of amount due
- 17 Government to provide means of crossing canals
- 18 Persons using water course to construct works for passing water
across roads etc
If they fail Canal officer may construct and recover cost
- 19 Adjustment of claims between persons jointly using water course
Recovery of amount found due
- 20 Supply of water through intervening water course
- 21 Application for construction of new water course
- 22 Procedure of Canal officer thereupon
- 23 Application for transfer of existing water course
Procedure thereupon
- 24 Objections to construction or transfer applied for
- 25 When applicant may be placed in occupation
- 26 Procedure when objection is held valid
- 27 Procedure when Canal officer disagrees with Collector
- 28 Expenses to be paid by applicant before receiving occupation
Procedure in fixing compensation
Recovery of compensation and expenses
- 29 Conditions binding on applicant placed in occupation
- 30 Procedure applicable to occupation for extensions and alterations

PART IV

OF THE SUPPLY OF WATER

- 31 In absence of written contract water supply to be subject to rules
- 32 Conditions as to—
power to stop water supply,
claims to compensation in case of failure or stoppage of supply
claims on account of interruption from other causes,
duration of supply

SECTIONS

sale or sub letting of right to use canal water,
transfer, with land, of contracts for water

No right acquired by user

 PART V

OF WATER-RATES

- 33 Liability when person using unauthorisedly cannot be identified
- 34 Liability when water runs to waste
- 35 Charges recoverable in addition to penalties
Decision of questions under sections 33 and 34
- 36 Charge on occupier for water how determined
Occupier's rate
- 37 Owner's rate
- 38 Amount of owner's rate
- 39 Owner's rate when not chargeable
- 40 When occupier is to pay both owner's rate and occupier's rate
- 41 Power to make rules for apportioning owner's rate
- 42 When owner is to pay owner's rate
- 43 Effect of introduction of canal irrigation on landlord's right to enhance
- 44 Water rate by whom payable when charged on land held by several owners

RECOVERY OF CHARGES

- 45 Certified dues recoverable as land revenue
- 46 Power to contract for collection of canal dues
- 47 Lambardars may be required to collect canal dues
- 48 Fines excluded from sections 45-46-47

 PART VI

OF CANAL-NAVIGATION

- 49 Detainer of vessels violating rules
Liability of owners of vessels causing damage
- 50 Recovery of fines for offences in navigating canals
- 51 Power to seize and detain vessel on failure to pay charges
- 52 Power to seize cargo or goods if charges due thereon are not paid
- 53 Procedure for recovery of such charges after seizure
- 54 Procedure in respect of vessel abandoned and goods unclaimed
Disposal of proceeds of sale

PART VII

OF DRAINAGE

SECTIONS

- 55 Power to prohibit obstructions or order their removal
- 56 Power to remove obstructions after prohibition
- 57 Preparation of schemes for works of improvement
- 58 Powers of persons employed on such schemes
- 59 Rate on lands benefited by works
- 60 Recovery of rate
- 61 Disposal of claims to compensation
- 62 Limitation of such claims

PART VIII

OF OBTAINING LABOUR FOR CANALS AND DRAINAGE WORKS

- 63 Definition of labourer
- 64 Power to prescribe number of labourers to be supplied by persons benefited by canal
- 65 Procedure for obtaining labour for works urgently required
- 66 Liability of labourers under requisition

PART IX

OF JURISDICTION

- 67 Jurisdiction under this Act of Civil Courts
- 68 Settlement of differences as to mutual rights and liabilities of persons interested in water course
- 69 Power to summon and examine witnesses

PART X

OF OFFENCES AND PENALTIES

- 70 Offences under Act
 - Penalty
- 71 Saving of prosecution under other laws
- 72 Compensation to person injured
- 73 Power to arrest without warrant
- 74 Definition of 'canal'

PART XI.

OF SUBSIDIARY RULES

SECTIONS

75 Power to make, alter and cancel rules

Publication of rules

SCHEDULE —[*Repealed*]ACT No VIII OF 1873¹

[11th February, 1873]

An Act to regulate Irrigation, Navigation and Drainage in Northern India

Whereas, throughout the territories to which this Act extends,²[the Preamble. Provincial Government] is entitled to use and control for public purposes the water of all rivers and streams flowing in natural channels, and of all lakes and other natural collections of still water, and whereas it is expedient to amend the law relating to irrigation navigation and drainage in the said territories it is hereby enacted as follows —

PART I

PRELIMINARY

1 This Act may be called the Northern India Canal and Drainage Act, 1873 Short title

It extends to the territories³[which on the 11th February, 1873, were] respectively under the Government of the Lieutenant-Governors of the North-Western Provinces and the Punjab, and under the administration of the Chief Commissioners of Oudh and the Central Provinces, and applies to all lands whether permanently settled, temporarily settled or free from revenue Local extent.

4* * * * *

¹ For Statement of Objects and Reasons see Gazette of India 1872 Pt V p 651, for Reports of Select Committee see *ibid* p 747 and *ibid* Supplement 1873 I 223, for Proceedings in Council see *ibid* Supplement, pp 919 956 and 1001, *ibid*, 1873 Supplement pp 54 156 223 246 and 279

² Sub s 1v the A O for 'the Govt'

³ Sub s 1v the A O for "for the time being" The Act originally extended to the territories which are now the U P the Punjab the N W F P and the C P. It has been rep in the C P by the C P Irrigation Act 1931 (C P 3 of 1931) It has been declared not to apply to any canal which is included for the time being under Sch I or Sch II to the Punjab Minor Canals Act, 1905 (Punjab 3 of 1905) —see s 2 (3) of that Act

⁴ Commencement clause rep 1v the Repealing Act, 1874 (16 of 1874)

(Part I —Preliminary)

2 [Repeal of Acts] Rep by the Repealing Act 1873 (XII of 1873), s 1 and Sch Pt II.

Interpreta
t on clause

3 In this Act unless there be something repugnant in the subject or context —

Canal

(1) canal includes—

- (a) all canals channels and reservoirs constructed maintained or controlled by ¹[the Provincial Government] for the supply or storage of water
- (b) all works embankments structures supply and escape channels connected with such canals channels or reservoirs
- (c) all water courses as defined in the second clause of this section
- (d) all parts of a river stream lake or natural collection of water or natural drainage channel to which the ²[Provincial Government] has applied the provisions of Part II of this Act

Water
course

(2) water course means any channel which is supplied with water from a canal but which is not maintained at the cost of ¹[the Provincial Government] and all subsidiary works belonging to any such channel

Drainage
work

(3) drainage work includes escape channels from a canal dams weirs embankments sluices groins and other works for the protection of lands from flood or from erosion formed or maintained by ³[the Provincial Government] under the provisions of Part VII of this Act but does not include works for the removal of sewage from towns

Vessel

⁴(4) vessel includes boats rafts timber and other floating bodies

Commis
sioner

⁵(5) Commissioner means a Commissioner of a division and includes any officer appointed under this Act to exercise all or any of the powers of a Commissioner

Collector

⁶(6) Collector means the head revenue officer of a district and includes a Deputy Commissioner or other officer appointed under this Act to exercise all or any of the powers of a Collector

¹ Subs by the A O for Govt

² Subs by the A O for I G

³ Subs by the A O for the Govt

⁴ Cf definition in the General Clauses Act 1897 (10 of 1897) s 3 (56)

⁵ In the N W F P for Commissioner read Revenue Commissioner see the N W F P Law and Justice Regulation 1901 (7 of 1901) s 6 (1) (f)

⁶ Cf definition in the General Clauses Act 1897 (10 of 1897) s 3 (10)

(Part I—Preliminary Part II—Of the Application of Water for Public Purposes.)

(7) Canal officer means an officer appointed under this Act to exercise control or jurisdiction over a canal or any part thereof

Canal officer

Superintending Canal officer means an officer exercising general control over a canal or portion of a canal

Superintending Canal officer

Divisional Canal officer means an officer exercising control over a division of a canal

Divisional Canal officer

Sub Divisional Canal officer means an officer exercising control over a sub division of a canal

Sub Divisional Canal officer

(8) district means a district as fixed for revenue purposes

District

4 The ¹[Provincial Government] may from time to time declare by ²notification in the Official Gazette the officers by whom and the local limits within which all or any of the powers or duties hereinafter conferred or imposed shall be exercised or performed

Power to appoint officers

All officers mentioned in section 3 clause (1), shall be respectively subject to the orders of such officers as the ¹[Provincial Government] from time to time directs

PART II

OF THE APPLICATION OF WATER FOR PUBLIC PURPOSES

5 Whenever it appears expedient to the ¹[Provincial Government] that the water of any river or stream flowing in a natural channel or of any lake or other natural collection of still water should be applied or used by ³[the Provincial Government] for the purpose of any existing or projected canal or drainage work the ¹[Provincial Government] may by notification⁴ in the Official Gazette declare that the said water will be so applied or used after a day to be named in the said notification not being earlier than three months from the date thereof

Notification to be supplied to be applied for public purposes

6 At any time after the day so named any Canal-officer acting under the orders of the ¹[Provincial Government] in this behalf may enter on any land and remove any obstruction and may close any channels and do any other thing necessary for such application or of the said water

Powers of Canal officer

¹ Subs. by the A. O. for L. G.

² For such notification see the Punjab P. & O.

³ Subs. by the A. O. for the Govt.

⁴ For such notification issued in respect of certain rivers in the Punjab and the U. P. see the respective R. & O.

(Part II —Of the Application of Water for Public Purposes)

Notice s
to claims
for com
pensation

7 As soon as is practicable after the issue of such notification, the Collector shall cause public notice to be given at convenient places, stating that ¹[the Provincial Government] intends to apply or use the said water as aforesaid and that claims for compensation in respect of the matters mentioned in section 8 may be made before him

Damage
for which
compensa
tion shall
not be
awarded

- 8 No compensation shall be awarded for any damage caused by—
- (a) stoppage or diminution of percolation or floods,
 - (b) deterioration of climate or soil,
 - (c) stoppage of navigation, or of the means of drifting timber or watering cattle,
 - (d) displacement of labour

Matters in
respect of
which
compensa
tion may
be
awarded

But compensation may be awarded in respect of any of the following matters —

- (e) stoppage or diminution of supply of water through any natural channel to any defined artificial channel, whether above or under ground in use at the date of the said notification
- (f) stoppage or diminution of supply of water to any work erected for purposes of profit on any channel whether natural or artificial in use at the date of the said notification,
- (g) stoppage or diminution of supply of water through any natural channel which has been used for purposes of irrigation within the five years next before the date of the said notification
- (h) damage done in respect of any right to a water course or the use of any water to which any person is entitled under the ²Indian Limitation Act 1877 Part IV
- (i) any other substantial damage not falling under any of the above clauses (a) (b) (c) or (d) and caused by the exercise of the powers conferred by this Act which is capable of being ascertained and estimated at the time of awarding such compensation

XV of

In determining the amount of such compensation regard shall be had to the diminution in the market value at the time of awarding compensation of the property in respect of which compensation is claimed and where such market value is not ascertainable the amount shall be reckoned at twelve times the amount of the diminution of the annual nett profits of such property caused by the exercise of the powers conferred by this Act

¹ Subs by the A. O. for the Govt

² See now the India Limitation Act 1908 (9 of 1908)

(Part II—Of the Application of Water for Public Purposes)

No right to any such supply of water as is referred to in clauses (e), (f) or (g) of this section, in respect of a work or channel not in use at the date of the notification, shall be acquired as against ¹[the Provincial Government], except by grant or under the ²Indian Limitation Act, 1877, Part IV,

and no right to any of the advantages referred to in clauses (a) (b) and (c) of this section shall be acquired as against ¹[the Provincial Government], under the same Part —

9 No claim for compensation for any such stoppage diminution or damage shall be made after the expiration of one year from such stoppage diminution or damage unless the Collector is satisfied that the claimant had sufficient cause for not making the claim within such period Limitation of claims

10 The Collector shall proceed to enquire into any such claim and to determine the amount of compensation if any which should be given to the claimant, and sections 9 to 12 (inclusive) 14 and 15 18 to 23 (inclusive), 26 to 40 (inclusive) 51 57 58 and 59 of the ³Land Acquisition Act 1870 shall apply to such inquiries Enquiry into claims and amount of compensation

Provided that instead of the first clause of the said section 26 the following shall be read — The provisions of this section and of section 8 of the Northern India Canal and Drainage Act 1873 shall be read to every assessor in a language which he understands before he gives his opinion as to the amount of compensation to be awarded

11 Every tenant holding under an unexpired lease, or having a right of occupancy, who is in occupation of any land at the time when any stoppage or diminution of water supply in respect of which compensation is allowed under section 8 takes place may claim an abatement of the rent previously payable by him for the said land on the ground that the interruption reduces the value of the holding Abatement of rent on interruption of water supply

12 If a water supply increasing the value of such holding is afterwards restored to the said land the rent of the tenant may be enhanced in respect of the increased value of such land due to the restored water supply, to an amount not exceeding that at which it stood immediately before the abatement Enhancement of rent on restoration of water supply

Such enhancement shall be on account only of the restored water supply and shall not affect the liability of the tenant to enhancement of rent on any other grounds

13 All sums of money payable for compensation under this Part shall become due three months after the claim for such compensation Compensation when due

¹ Sub. by the A. O. for the Govt.

² Section 114 of the Indian Limitation Act 1908 (9 of 1908)

³ See now the Land Acquisition Act 1924 (1 of 1924)

Part II —Of the Application of Water for Public Purposes Part
III —Of the Construction and Maintenance of Works)

is made in respect of the stoppage diminution or damage complained of

Interest

and simple interest at the rate of six per cent per annum shall be allowed on any such sum remaining unpaid after the said three months except where the non payment of such sum is caused by the wilful neglect or refusal of the claimant to receive the same

PART III

OF THE CONSTRUCTION AND MAINTENANCE OF WORKS

14 Any Canal officer or other person acting under the general or special order of a Canal officer

may enter upon any lands adjacent to any canal or through which any canal is proposed to be made and undertake surveys or levels thereon

and dig and bore into the sub soil

and make and set up suitable land marks level marks and water gauges

and do all other acts necessary for the proper prosecution of any enquiry relating to any existing or projected canal under the charge of the said Canal officer

and where otherwise such enquiry cannot be completed such officer or other person may cut down and clear away any part of any standing crop fence or jungle

and may also enter upon any land building or watercourse on account of which any water rate is chargeable for the purpose of inspecting or regulating the use of the water supplied or of measuring the lands irrigated thereby or chargeable with a water rate and of doing all things necessary for the proper regulation and management of such canal

Provided that if such Canal officer or person proposes to enter into any building or enclosed court or garden attached to a dwelling house not supplied with water flowing from any canal he shall previously give the occupier of such building court or garden at least seven days notice in writing of his intention to do so

In every case of entry under this section the Canal officer shall at the time of such entry tender compensation for any damage which

Power to enter and survey etc

Power to clear land

Power to inspect and regulate water supply

Notice of entry into house

Compensation for damage

(Part III —Of the Construction and Maintenance of Works)

may be occasioned by any proceeding under this section and in case caused by
of dispute as to the sufficiency of the amount so tendered he shall entry.
forthwith refer the same for decision by the Collector and such deci
sion shall be final

15 In case of any accident happening or being apprehended to a Lo er to
canal any Divisional Canal officer or any person acting under his gene enter for
ral or special orders in this behalf may enter upon any lands adjacent r pairs
to such canal, and may execute all works which may be necessary for and to
the purpose of repairing or preventing such accident prevent accidents

In every such case such Canal officer or person shall tender com Compens a
pensation to the proprietors or occupiers of the sud lands for all dam tion for
age done to the same If such tender is not accepted the Canal officer damage
shall refer the matter to the Collector, who shall proceed to award to land
compensation for the damage as though the 1[Provincial Government]
had directed the occupation of the lands under section 43 of the Land
Acquisition Act 1870 2

16 Any persons desiring to use the water of any canal may apply Applicant or
in writing to the Divisional or Sub divisional Canal officer of the div by persons
ision or sub division of the canal from which the water course is to be desiring
supplied, requesting such officer to construct or improve a water course to use
at the cost of the applicants canal
after

The application shall state the works to be undertaken their ap Contents
proximate estimated cost, or the amount which the applicants are of
willing to pay for the same or whether they engage to pay the actual applicati
cost as settled by the Divisional Canal officer and how the payment
is to be made

When the assent of the Superintending Canal officer is given to fulfil
such application, all the applicants shall after the application has been of s, f, f
duly attested before the Collector, be jointly and severally liable for cost f
the cost of such works to the extent mentioned therein

Any amount becoming due under the terms of such application, and
and not paid to the Divisional Canal officer, or the person authorised by
by him to receive the same on or before the date on which it becomes
due, shall, on the demand of such officer, be recoverable by the Col
lector as if it were an arrear of land revenue

17. There shall be provided, at the cost of 3[the Provincial G, , ,
ment], suitable means of crossing canals constructed or maint /
the cost of 3[the Provincial Government], at such places as th, , ,

1 Subs by the A O for L G

2 See now the Land Acquisition Act 1894 (1 of 1894) s. 3.

3 Subs by the A O for th Govt

(Part III —Of the Construction and Maintenance of Works)

crossing
canals

vincial Government] thinks necessary for the reasonable convenience of the inhabitants of the adjacent lands

On receiving a statement in writing, signed by not less than five of the owners of such lands to the effect that suitable crossings have not been provided on any canal, the Collector shall cause enquiry to be made into the circumstances of the case and if he thinks that the statement is established he shall report his opinion thereon for the consideration of the [Provincial Government], and the [Provincial Government] shall cause such measures in reference thereto to be taken as it thinks proper

Persons
using
water
course to
construct
works for
passing water
across roads,
etc

18 The Divisional Canal officer may issue an order to the persons using any water course to construct suitable bridges culverts or other works for the passage of the water of such water course across any public road canal or drainage channel in use before the said water course was made or to repair any such works

Such order shall specify a reasonable period within which such construction or repairs shall be completed,

If they
fail
Canal
officer
may construct

and if after the receipt of such order, the persons to whom it is addressed do not, within the said period construct or repair such works to the satisfaction of the said Canal officer, he may, with the previous approval of the Superintending Canal officer himself construct or repair the same

and
recover
cost

and if the said persons do not when so required, pay the cost of such construction or repairs as declared by the Divisional Canal officer, the amount shall on the demand of the Divisional Canal officer, be recoverable from them by the Collector as if it were an arrear of land revenue

Adjust-
ment of
claims
between
persons
jointly
using
water
course

19 If any person, jointly responsible with others for the construction or maintenance of a water course, or jointly making use of a water course with others, neglects or refuses to pay his share of the cost of such construction or maintenance, or to execute his share of any work necessary for such construction or maintenance the Divisional or Sub divisional Canal officer, on receiving an application in writing from any person injured by such neglect or refusal shall serve notice on all the parties concerned that on the expiration of a fortnight from the service, he will investigate the case and shall, on the expiration of that period investigate the case accordingly and make such order thereon as to him seems fit

(Part III—Of the Construction and Maintenance of Works)

Such order shall be appealable to the Commissioner whose order hereon shall be final

Any sum directed by such order to be paid within a specified period may, if not paid within such period, and if the order remains in force, be recovered by the Collector, from the person directed to pay the same as if it were an arrear of land revenue

Recovery of amount found due

20 Whenever application is made to a Divisional Canal officer for a supply of water from a canal and it appears to him expedient that such supply should be given and that it should be conveyed through some existing water course he shall give notice to the persons responsible for the maintenance of such water course to show cause, on a day not less than fourteen days from the date of such notice, why the said supply should not be so conveyed and, after making enquiry on such day, the Divisional Canal officer shall determine whether and on what conditions the said supply shall be conveyed through such water course

Supply of water through intervening water course

When such officer determines that a supply of canal water may be conveyed through any water course as aforesaid his decision shall when confirmed or modified by the Superintending Canal officer be binding on the applicant and also on the persons responsible for the maintenance of the said water course

Such applicant shall not be entitled to use such water course until he has paid the expense of any alteration of such water course necessary in order to his being supplied through it and also such share of the first cost of such water course as the Divisional or Superintending Canal officer may determine

Such applicant shall also be liable for his share of the cost of maintenance of such water course so long as he uses it

21 Any person desiring the construction of a new water course may apply in writing to the Divisional Canal officer, stating—

Application for construction of new water course

- (1) that he has endeavoured unsuccessfully to acquire, from the owners of the land through which he desires such water-course to pass a right to occupy so much of the land as will be needed for such water-course,
- (2) that he desires the said Canal officer in his behalf and at his cost, to do all things necessary for acquiring such right,
- (3) that he is able to defray all costs involved in acquiring such right and constructing such water-course

¹ In the N. W. F. P. the Commissioner read Revenue Commissioner, see the N. W. F. P. Law and Justice Regulations 1901 (7 of 1901) s. 6 (1) (f)

(Part III—Of the Construction and Maintenance of Works)

22 If the Divisional Canal officer considers—

- (1) that the construction of such water course is expedient, and
- (2) that the statements in the application are true,

he shall call upon the applicant to make such deposit as the Divisional Canal officer considers necessary to defray the cost of the preliminary proceedings and the amount of any compensation which he considers likely to become due under section 28

and upon such deposit being made he shall cause enquiry to be made into the most suitable alignment for the said water course and shall mark out the land which in his opinion it will be necessary to occupy for the construction thereof and shall forthwith publish a notice in every village through which the water course is proposed to be taken that so much of such land as belongs to such village has been so marked out and shall send a copy of such notice to the Collector of every district in which any part of such land is situate

23 Any person desiring that an existing water course should be transferred from its present owner to himself may apply in writing to the Divisional Canal officer stating—

- (1) that he has endeavoured unsuccessfully to procure such transfer from the owner of such water course,
- (2) that he desires the said Canal officer in his behalf and at his cost to do all things necessary for procuring such transfer,
- (3) that he is able to defray the cost of such transfer

If the Divisional Canal officer considers—

- (a) that the said transfer is necessary for the better management of the irrigation from such water course and
- (b) that the statements in the application are true

he shall call upon the applicant to make such deposit as the Divisional Canal officer considers necessary to defray the cost of the preliminary proceedings and the amount of any compensation that may become due under the provisions of section 28 in respect of such transfer

and upon such deposit being made he shall publish a notice of the application in every village and shall send a copy of the notice to the Collector of every district through which such water course passes

24 Within thirty days from the publication of a notice under section 22 or section 23, as the case may be any person interested in the land or water course to which the notice refers may apply to the Collector by petition, stating his objection to the construction or transfer for which application has been made

Procedure
of Canal
officer
thereupon

Applicant on
for
transfer
of existing
water
course

Procedure
thereupon

Objections
to
construction or
transfer
applied
for

(Part III—Of the Construction and Maintenance of Works)

The Collector may either reject the petition or may proceed to inquire into the validity of the objection giving previous notice to the Divisional Canal officer of the place and time at which such inquiry will be held

The Collector shall record in writing all orders passed by him under this section and the grounds thereof

25 If no such objection is made or (where such objection is made) if the Collector overrules it he shall give notice to the Divisional Canal officer to that effect and shall proceed forthwith to place the said applicant in occupation of the land marked out or of the water course to be transferred as the case may be

When applica-
tion may be
placed in
occupation

26 If the Collector considers any objection made as aforesaid to be valid he shall inform the Divisional Canal officer accordingly and, if such officer sees fit, he may in the case of an application under section 21 alter the boundaries of the land so marked out and may give fresh notice under section 22 and the procedure hereinbefore provided shall be applicable to such notice and the Collector shall thereupon proceed as before provided

Procedure
when
objection
is held
valid

27 If the Canal officer disagrees with the Collector the matter shall be referred for decision to the Commissioner

Procedure
when
Canal
officer
disagrees
with
Collector

Such decision shall be final and the Collector if he is so directed by such decision, shall, subject to the provisions of section 28, cause the said applicant to be placed in occupation of the land so marked out or of the water course to be transferred as the case may be

28 No such applicant shall be placed in occupation of such land or water course until he has paid to the person named by the Collector such amount as the Collector determines to be due as compensation for the land or water course so occupied or transferred and for any damage caused by the marking out or occupation of such land together with all expenses incidental to such occupation or transfer

Expenses
to be
paid by
applicant
before
occupancy

In determining the compensation to be made under this section the Collector shall proceed under the provisions of the Land Acquisition Act, 1870² but he may if the person to be compensated so desires, award such compensation in the form of a rent-charge payable in respect of the land or water course occupied or transferred

Proce-
dure
under
the
Land
Acquisition
Act, 1870

If such compensation and expenses are not paid when demanded by the person entitled to receive the same the amount may be recovered by the Collector as if it were an arrear of land revenue, and

Recovery
of com-
pensation
and
expenses

¹ In the N. W. P. for Commissioner read Revenue Commissioner, see the N. W. P. Land and Justice Regulation 1901 (7 of 1901) s. 6 (1) (i)

² See now the Land Acquisition Act 1894 (1 of 1894)

(Part III —Of the Construction and Maintenance of Works)

shall when recovered, be paid by him to the person entitled to receive the same

Conditions
binding on
applicant
placed in
occupation

29. When any such applicant is placed in occupation of land or of a water course as aforesaid the following rules and conditions shall be binding on him and his representative in interest —

First —All works necessary for the passage across such water course, or water courses existing previous to its construction and of the drainage intercepted by it and for affording proper communications across it for the convenience of the neighbouring lands shall be constructed by the applicant and be maintained by him or his representative in interest to the satisfaction of the Divisional Canal officer

Second — Land occupied for a water course under the provisions of section 22 shall be used only for the purpose of such water course

Third —The proposed water course shall be completed to the satisfaction of the Divisional Canal officer within one year after the applicant is placed in occupation of the land

In cases in which land is occupied or a water course is transferred on the terms of a rent charge

Fourth —The applicant or his representative in interest shall, so long as he occupies such land or water course pay rent for the same at such rate and on such days as are determined by the Collector when the applicant is placed in occupation

Fifth —If the right to occupy the land cease owing to a breach of any of these rules the liability to pay the said rent shall continue until the applicant or his representative in interest has restored the land to its original condition or until he has paid by way of compensation for any injury done to the said land such amount and to such persons as the Collector determines

Sixth —The Collector may, on the application of the person entitled to receive such rent or compensation determine the amount of rent due or assess the amount of such compensation and if any such rent or compensation be not paid by the applicant or his representative in interest, the Collector may recover the amount with interest thereon at the rate of six per cent per annum from the date on which it became due, as if it were an arrear of land revenue, and shall pay the same, when recovered, to the person to whom it is due

If any of the rules and conditions prescribed by this section are not complied with

(Part III —Of the Construction and Maintenance of Works Part
IV —Of the Supply of Water)

or if any water course constructed or transferred under this Act is disused for three years continuously,

the right of the applicant, or of his representative in interest, to occupy such land or water course shall cease absolutely

30 The procedure hereinbefore provided for the occupation of land for the construction of a water course shall be applicable to the occupation of land for any extension or alteration of a water course and for the deposit of soil from water course clearances

Procedure applicable to occupation for extensions and alterations

PART IV

OF THE SUPPLY OF WATER

31 In the absence of a written contract or so far as any such contract does not extend every supply of canal water shall be deemed to be given at the rates and subject to the conditions prescribed by the rules to be made by the ¹[Provincial Government] in respect thereof

In absence of written contract water supply to be subject to rules

32 Such contracts and rules must be consistent with the following conditions —

Conditions as to—

(a) The Divisional Canal officer may not stop the supply of water to any water course or to any person except in the following cases —

power to stop water supply,

(1) whenever and so long as it is necessary to stop such supply for the purpose of executing any work ordered by competent authority and with the previous sanction of the ¹[Provincial Government]

(2) whenever and so long as any water course is not maintained in such proper customary repair as to prevent the wasteful escape of water therefrom

(3) within periods fixed from time to time by the Divisional Canal officer

(b) No claim shall be made against ²[the Provincial Government] for compensation in respect of loss caused by the failure or stoppage of the water in a canal, by reason of any cause beyond the control of ²[the Provincial Government] or of any repairs, alterations or additions to the canal, or of any measures taken for regulating the proper flow of water therein, or for maintaining the established course of irrigation which the Divisional Canal officer considers necessary, but

claims to compensation in case of failure or stoppage of supply,

¹ Subs by the A O for I C

² Subs by the A O for the Govt

(Part IV —Of the Supply of Water)

the person suffering such loss may claim such remission of the ordinary charges payable for the use of the water as is authorised by the ¹[Provincial Government]

claims on account of interruption from other causes

(c) If the supply of water to any land irrigated from a canal be interrupted otherwise than in the manner described in the last preceding clause, the occupier or owner of such land may present a petition for compensation to the Collector for any loss arising from such interruption and the Collector may award to the petitioner reasonable compensation for such loss

duration of supply

(d) When the water of a canal is supplied for the irrigation of a single crop, the permission to use such water shall be held to continue only until that crop comes to maturity and to apply only to that crop, but if it be supplied for irrigating two or more crops to be raised on the same land within the year such permission shall be held to continue for one year from the commencement of the irrigation, and to apply to such crops only as are matured within that year

sale or subletting of right to use canal water

(e) Unless with the permission of the Superintending Canal officer, no person entitled to use the water of any canal, or any work, building or land appertaining to any canal shall sell or sublet or otherwise transfer his right to such use

Provided that the former part of this clause shall not apply to the use by a cultivating tenant of water supplied by the owner of a water course for the irrigation of the land held by such tenant

transfer, with land of contracts for water

But all contracts made between ²[the Provincial Government] and the owner or occupier of any immovable property, as to the supply of canal water to such property, shall be transferable therewith, and shall be presumed to have been so transferred whenever a transfer of such property takes place

No right acquired by user

(f) No right to the use of the water of a canal shall be, or be deemed to have been, acquired under the ³Indian Limitation Act, 1877 Part XV of 1877, nor shall ²[the Provincial Government] be bound to supply any person with water except in accordance with the terms of a contract in writing

¹ Subs by the A O for L G

² Subs by the A O for Govt

³ See now the Indian Limitation Act 1908 (9 of 1908)

(Part V—Of Water-rates)

PART V

OF WATER RATES

33 If water supplied through a water-course be used in an unauthorised manner, and if the person by whose act or neglect such use has occurred cannot be identified,

Liability when person using unauthorisedly cannot be identified

the person on whose land such water has flowed if such land has derived benefit therefrom

or if such person cannot be identified or if such land has not derived benefit therefrom, all the persons chargeable in respect of the water supplied through such water course, shall be liable, or jointly liable, as the case may be, to the charges made for such use

34 If water supplied through a water course be suffered to run to waste, and if, after enquiry by the Divisional Canal officer the person through whose act or neglect such water was suffered to run to waste cannot be discovered all the persons chargeable in respect of the water supplied through such water course shall be jointly liable for the charges made in respect of the water so wasted

Liability when water runs to waste

35 All charges for the unauthorised use or for waste of water may be recovered in addition to any penalties incurred on account of such use or waste

Charges recoverable in addition to penalties

All questions under section 33 or section 34 shall be decided by the Divisional Canal officer subject to an appeal to the Head Revenue-officer of the district or such other appellate authority provided under section 7

Decision of questions under sections 33 and 34

36 The rates to be charged for water supplied for purposes of irrigation to the occupiers of land shall be determined by the rules¹ to be made by the Provincial Government and such occupiers as accept the water shall pay the same

Charge on occupier of water, as determined

A rate so charged shall be called the occupier's rate

Occupier's rate

37 The rules¹ hereinafore referred to may prescribe and determine what persons or classes of persons are to be deemed to be occupiers for the purposes of this section and may also determine the several liabilities in respect of the payment of the occupier's rate, of tenants and of persons to whom tenants may have sublet their lands or of proprietors and of persons to whom proprietors may have let the lands held by them in cultivating occupancy]

¹ For instance of such notifications see Punjab Gazette, 1903 Pt. I, pp. 223 and 24

² Subs. by the A.O. for 1916

³ Inserted by the Northern India Canal and Drainage (Amendment) Act 1909 (16 of 1909) s. 2

(Part V —Of Water-rates)

'Owner's
rate'

37 In addition to the occupier's rate, a rate to be called the "owner's rate" may be imposed, according to rules¹ to be made by the ²[Provincial Government], on the owners of canal irrigated lands, in respect of the benefit which they derive from such irrigation

Amount of
owner's
rate

38 The owner's rate shall not exceed the sum which, under the rules for the time being in force for the assessment of land revenue, might be assessed on such land on account of the increase in the annual value or produce thereof caused by the canal irrigation. And, for the purpose of this section only, land which is permanently settled or held free of revenue shall be considered as though it were temporarily settled and liable to payment of revenue

Owner's
rate,
when not
chargeable

39 No owner's rate shall be chargeable either on the owner or occupier of land temporarily assessed to pay land revenue at irrigation-rates, during the currency of such assessment

When
occupier
is to pay
both
owner's
rate and
occupier's
rate

340 If such land is occupied by the owner,
or if it is occupied by a tenant whose rent is not liable to enhancement on the ground that the value of the produce of the land or the productive powers of the land has or have been increased by irrigation,
such owner or tenant shall pay the owner's rate as well as the occupier's rate

Power
to make
rules for
apportion
ing owner's
rate

341 In the case of a tenant with a right of occupancy, the ²[Provincial Government] shall have power to make rules for dividing the owner's rate between such tenant and his landlord, proportionately to the extent of the beneficial interest of each in the land

When
owner
is to pay
owner's
rate

342 If the owner of the land is not the occupier, but has power to enhance the rent of the occupier on the ground that the value of the produce or the productive powers of the land has or have been increased by irrigation,

or if, when the amount of a rent was fixed, the land was irrigated from the canal,

the owner shall pay the owner's rate

Effect of
introduc-
tion of

343 If a revision of settlement is a ground for entertaining a suit for the enhancement of rent the introduction of canal irrigation into

¹ For rules for assessing owner's rates see the Punjab and the U P R & O

² Subs by the A O for L G

³ Ss 40 to 43 have been rep in the Punjab by the Punjab Tenancy Act, 1887 (16 of 1887), s 3 and Sch

(Part V—Of Water-rates)

any land shall have the same effect on the landlord's right to re enhance the rent of a tenant with a right of occupancy of such land, as if a revision of settlement had taken place under which the revenue payable in respect of such land had been increased

canal irrigation on landlord's right to enhance

44 Where a water rate is charged on land held by several joint owners, it shall be payable by the manager or other person who receives the rents or profits of such land and may be deducted by him from such rents or profits before division or may be recovered by him from the persons liable to such rate in the manner customary in the recovery of other charges on such rents or profits

Water rate by whom payable when charged on land held by several owners

Recovery of charges

145 Any sum lawfully due under this Part and certified by the Divisional Canal officer to be so due which remains unpaid after the day on which it becomes due shall be recoverable by the Collector from the person liable for the same as if it were an arrear of land revenue

Certified dues recoverable as land revenue

46 The Divisional Canal officer or the Collector may enter into an agreement with any person for the collection and payment to 2[the Provincial Government] by such person of any sum payable under this Act by a third party

Power to contract for collection of canal dues

When such agreement has been made such person may recover such sum by suit as though it were a debt due to him or an arrear of rent due to him on account of the land work or building in respect of which such sum is payable or for or in which the canal water shall have been supplied or used

If such person makes default in the payment of any sum collected by him under this section such sum may be recovered from him by the Collector under section 15 and if such sum or any part of it be still due by the said third party the sum or part due may be recovered in like manner by the Collector from such third party

347 The Collector may require the landlord, or person under an engagement to pay the land revenue of any estate to collect and pay any sums payable under this Act by a third party in respect of any land or water in such estate

Lamildars may be required to collect canal-dues.

Such sums shall be recoverable by the Collector as if they were arrears of land revenue due in respect of the defaulter's share in such estate

1 This section has been replaced by another section in the U. I. see the Northern India Canal and Drainage (U. I. Amendment) Act 1932 (U. I. 6 of 1932) s. 2.

2 Subs. by the A. O. for the Govt.

3 This section has been replaced by another section in the U. I. see the Northern India Canal and Drainage (U. I. Amendment) Act 1932 (U. I. 6 of 1932) s. 3.

(Part V—Of Water rates Part VI—Of Canal navigation)

and for the purpose of collecting such sums from the subordinate zemindars ruyats, ¹[tenants or sub tenants], such landlord or person may exercise the powers and shall be subject to the rules, laid down in the law for the time being in force in respect to the collection by him of the rents of land or of shares of land revenue

The ²[Provincial Government] shall provide—

(a) for remunerating persons collecting sums under this section, or

(b) for indemnifying them against expenses properly incurred by them in such collection or

(c) for both such purposes

48 Nothing in sections 15 16 or 17 applies to fines

Fines
excluded
from
sections
45 46, 47

PART VI

OF CANAL NAVIGATION

Detainer
of vessels
violating
rules

49 Any vessel entering or navigating any canal contrary to the rules made in that behalf by the ²[Provincial Government], or so as to cause danger to the canal or the other vessels therein, may be removed or detained or both removed and detained, by the Divisional Canal Officer or by any other person duly authorised in this behalf

Liability of
owners of
vessels
causing
damage

The owner of any vessel causing damage to a canal, or removed or detained under this section shall be liable to pay to ³[the Provincial Government] such sum as the Divisional Canal officer, with the approval of the Superintending Canal officer, determines to be necessary to defray the expenses of repairing such damage or of such removal or detention, as the case may be

Recovery
of fines for
offences in
navigating
canals

50 Any fine imposed under this Act upon the owner of any vessel, or the servant or agent of such owner or other person in charge of any vessel, for any offence in respect of the navigation of such vessel, may be recovered either in the manner prescribed by the Code of Criminal Procedure⁴ or, if the Magistrate imposing the fine so directs as though it were a charge due in respect of such vessel

Power to
seize and
detain

51 If any charge due under the provisions of this Part in respect of any vessel is not paid on demand to the person authorised to collect

¹ Subs by the Northern India Canal and Drainage (Amendment) Act 1899 (16 of 1899) s 3 for or tenants

² Subs by the A O for I G

³ Subs by the A O for the Govt

⁴ See now the Code of Criminal Procedure 1898 (5 of 1898)

(Part I I —Of Canal navigation)

the same, the Divisional Canal officer may seize and detain such vessel and the furniture thereof until the charge so due, together with all expenses and additional charges arising from such seizure and detention is paid in full

vessel on failure to pay charges

52 If any charge due under the provisions of this Part in respect of any cargo or goods carried in a Government vessel on a canal or stored on or in lands or warehouses occupied for the purposes of a canal is not paid on demand to the person authorised to collect the same, the Divisional Canal officer may seize such cargo or goods and detain them until the charge so due together with all expenses and additional charges arising from such seizure and detention is paid in full

Power to seize cargo or goods if charges due thereon are not paid

53 Within a reasonable time after any seizure under section 51 or section 52, the said Canal officer shall give notice to the owner or person in charge of the property seized that it or such portion of it as may be necessary, will on a day to be named in the notice but not sooner than fifteen days from the date of the notice be sold in satisfaction of the claim on account of which such property was seized unless the claim be discharged before the day so named

Procedure for recovery of such charges after seizure

And if such claim be not so discharged the said Canal officer may on such day sell the property seized or such part thereof as may be necessary to yield the amount due together with the expenses of such seizure and sale

Provided that no greater part of the furniture of any vessel or of any cargo or goods shall be so sold than shall as nearly as may be suffice to cover the amount due in respect of such vessel cargo or goods

The residue of such furniture cargo or goods and of the proceeds of the sale shall be made over to the owner or person in charge of the property seized

54 If any vessel left and abandoned in a canal or any cargo or goods stored in a Government vessel on a canal or stored on or in lands or warehouses occupied for the purposes of a canal be left unclaimed for a period of two months the Divisional Canal officer may take possession of the same

Procedure in respect of vessels or goods left unclaimed for a period of two months

(Part VI —Of Canal navigation Part VII —Of Drainage)

Disposal of
proceeds
of sale

The said vessel and its contents, and the said cargo or goods if unsold, or, if a sale has taken place, the proceeds of the sale, after paying all tolls, charges and expenses incurred by the Divisional Canal officer on account of the taking possession and sale, shall be made over to the owner of the same when his ownership is established to the satisfaction of the Divisional Canal officer

If the Divisional Canal officer is doubtful to whom such property or proceeds should be made over, he may direct the property to be sold as aforesaid, and the proceeds to be paid into the district treasury, there to be held until the right thereto be decided by a Court of competent jurisdiction

PART VII

OF DRAINAGE

Power to
prohibit
obstruc-
tions or
order
the r
removal

55 Whenever it appears to the ¹[Provincial Government] that injury to any land or the public health or public convenience has arisen or may arise from the obstruction of any river, stream or drainage channel such Government may by ²notification published in the Official Gazette prohibit within limits to be defined in such notification the formation of any obstruction, or may, within such limits, order the removal or other modification of such obstruction

Thereupon so much of the said river, stream or drainage channel as is comprised within such limits shall be held to be a drainage work as defined in section 3

Power to
remove ob-
structions
after pro-
hibition

56 The Divisional Canal officer, or other person authorised by the ¹[Provincial Government] in that behalf may, after such publication issue an order to the person causing or having control over any such obstruction to remove or modify the same within a time to be fixed in the order

If within the time so fixed such person does not comply with the order the said Canal officer may himself remove or modify the obstruction, and if the person to whom the order was issued does not, when called upon pay the expenses involved in such removal or modification, such expenses shall be recoverable by the Collector from him or his representative in interest as an arrear of land revenue

¹ Subs by the A O for L G

² For such notifications see the Punjab and U P R and O

(Part VII—Of Drainage)

57 Whenever it appears to the ¹[Provincial Government] that any drainage works are necessary for the improvement of any lands, or for the proper cultivation or irrigation thereof, 1 repara-
tion of
schemes
for works
of im-
provement

or that protection from floods or other accumulations of water, or from erosion by a river, is required for any lands,

the ¹[Provincial Government] may cause a scheme for such drainage-works to be drawn up and published, together with an estimate of its cost and a statement of the proportion of such cost which ²[the Provincial Government] proposes to defray, and a schedule of the lands which it is proposed to make chargeable in respect of the scheme

58. The persons authorised by the ¹[Provincial Government] to draw up such scheme may exercise all or any of the powers conferred on the Canal officers by section 14 Powers of
persons
employed
on such
schemes

59 An annual rate, in respect of such scheme may be charged, according to rules to be made by the ¹[Provincial Government] on the owners of all lands which shall in the manner prescribed by such rules, be determined to be so chargeable Rate on
lands
benefited
by work

Such rate shall be fixed as nearly as possible so as not to exceed either of the following limits —

(1) six per cent per annum on the first cost of the said works, adding thereto the estimated yearly cost of the maintenance and supervision of the same and deducting therefrom the estimated income if any derived from the works excluding the said rate

(2) in the case of agricultural land the sum which under the rules then in force for the assessment of land revenue, might be assessed on such land on account of the increase of the annual value or produce thereof caused by the drainage work

Such rate may be varied from time to time within such maximum, by the ¹[Provincial Government]

So far as any defect to be remedied is due to any canal water-course, road or other work or obstruction constructed or caused by the ¹[Provincial Government] or by any person, a proportionate share of the cost of the drainage works required for the remedy of the said defect shall be borne by such Government or such person as the case may be

¹ Subs by the A O for L G

² Subs by the A O for the Govt

(Part VII—Of Drainage Part VIII—Of obtaining Labour for Canals and Drainage works)

Recovery of rate

60 Any such drainage rate may be collected and recovered in manner provided by sections 15, 16 and 17 for the collection and recovery of water rates

Disposal of claims to compensation

61 Whenever in pursuance of a notification made under section 55, any obstruction is removed or modified,

or whenever any drainage work is carried out under section 57, all claims for compensation on account of any loss consequent on the removal or modification of the said obstruction or the construction of such work may be made before the Collector and he shall deal with the same in the manner provided in section 10

Limitation of such claims

62 No such claim shall be entertained after the expiration of one year from the commencement of the loss complained of unless the Collector is satisfied that the claimant had sufficient cause for not making the claim within such period

PART VIII

OF OBTAINING LABOUR FOR CANALS AND DRAINAGE WORKS

Definition of labourer

63 For the purposes referred to in this Part the word "labourer" include persons who execute any handicraft specified in rules to be made in that behalf by the ¹[Provincial Government]

Power to prescribe number of labourers to be supplied by persons benefited by canal

64 In any district in which a canal or drainage work is constructed, maintained or projected by ²[the Provincial Government] the ¹[Provincial Government] may if it thinks fit direct the Collector—

- (a) to ascertain the proprietors sub-proprietors or farmers whose villages or estates, *are or will be in the judgment of the Collector benefited by such canal or drainage work* and
- (b) to set down in a list having due regard to the circumstances of the districts and of the several proprietors, sub-proprietors or farmers the number of labourers which shall be furnished by any of the said persons, jointly or severally, from any such village or estate, for employment on any such canal or drainage work when required as hereinafter provided

The Collector may from time to time add to or alter such list or any part thereof

¹ Subs. by the A. O. for L. G.

² Subs. by the A. O. for Govt.

(Part VIII.—Of obtaining Labour for Canals and Drainage works)

65 Whenever it appears to a Divisional Canal officer duly authorised by the 1[Provincial Government] that unless some work is immediately executed such serious damage will happen to any canal or drainage work as to cause sudden and extensive public injury,

Procedure
for
obtaining
labour for
works
urgently
required

and that the labourers necessary for the proper execution thereof cannot be obtained in the ordinary manner within the time that can be allowed for the execution of such work so as to prevent such injury the said officer may require any person named in such list to furnish as many labourers (not exceeding the number which according to the said list he is liable to supply) as to the said officer seems necessary for the immediate execution of such work.

Every requisition so made shall be in writing and shall state—

(a) the nature and locality of the work to be done

(b) the number of labourers to be supplied by the person upon whom the requisition is made and

(c) the approximate time for which and the day on which the labourers will be required

and a copy thereof shall be immediately sent to the Superintending Canal officer for the information of the 1[Provincial Government]

The 1[Provincial Government] shall fix and may from time to time alter the rates to be paid to any such labourers.

Provided that such rates shall exceed the highest rates for the time being paid in the neighbourhood for similar work.

In the case of every such labourer the payment shall continue for the whole period during which he is in consequence of the provisions of this Part prevented from following his ordinary occupation.

The 1[Provincial Government] may * * * direct that the provisions of this Part shall apply either permanently or temporarily (as the case may be) to any district or part of a district for the purpose of effecting necessary annual silt clearance or to prevent the proper operation of a canal or drainage work being stopped or so much interfered with as to stop the established course of irrigation or drainage.

66 When any requisition has been made on any person named in the said list, every labourer ordinarily resident within the village or estate of such person shall be liable to supply and to continue to supply his labour, for the purposes aforesaid.

1 Substituted by the A.O. for 1914.

2 The words "with the provisions of the Act of 1873" are deleted by the Provincial Act 1914 (s. 4 of 1914).

(Part IX —Of Jurisdiction Part X —Of Offences and Penalties)

PART IX

OF JURISDICTION

Jurisdiction
under this
Act of
Civil
Courts

67 Except where herein otherwise provided, all claims against [the Provincial Government] in respect of anything done under this Act may be tried by the Civil Courts but no such Court shall in any case pass an order as to the supply of canal water to any crop sown or growing at the time of such order

Settlement
of
differences
as to
mutual
rights and
liabilities
of persons
interested
in water
course

68 Whenever a difference arises between two or more persons in regard to their mutual rights or liabilities in respect of the use construction or maintenance of a water course any such person may apply in writing to the Divisional Canal officer stating the matter in dispute. Such officer shall thereupon give notice to the other persons interested that on a day to be named in such notice he will proceed to inquire into the said matter. And after such inquiry he shall pass his order thereon unless he transfers (as he is hereby empowered to do) the matter to the Collector who shall thereupon inquire into and pass his order on the said matter

Such order shall be final as to the use or distribution of water for any crop sown or growing at the time when such order is made and shall thereafter remain in force until set aside by the decree of a Civil Court

Power to
summon
and
examine
witnesses

69 Any officer empowered under this Act to conduct any inquiry may exercise all such powers connected with the summoning and examining of witnesses as are conferred on Civil Courts by the ²Code of Civil Procedure and every such inquiry shall be deemed a judicial proceeding

PART X

OF OFFENCES AND PENALTIES

* Offences
under Act

70 Whoever without proper authority and voluntarily does any of the acts following that is to say —

(1) damages alters enlarges or obstructs any canal or drainage work

(2) interferes with increases or diminishes the supply of water in or the flow of water from through over or under any canal or drainage work

¹ Subs. by the A. O. for Govt

² See now the Code of Civil Procedure 1908 (Act 5 of 1908)

(Part A—Of Offences and Penalties)

- (3) interferes with or alters the flow of water in any river or stream, so as to endanger damage or render less useful any canal or drainage work
- (4) being responsible for the maintenance of a water course, or using a water course, neglects to take proper precautions for the prevention of waste of the water thereof or interferes with the authorised distribution of the water therefrom or uses such water in an unauthorised manner
- (5) corrupts or fouls the water of any canal so as to render it less fit for the purposes for which it is ordinarily used
- (6) causes any vessel to enter or navigate any canal contrary to the rules for the time being prescribed by the ¹[Provincial Government] for entering or navigating such canal,
- (7) while navigating on any canal neglects to take proper precautions for the safety of the canal and of vessels thereon,
- (8) being liable to furnish labourers under Part VIII of this Act fails without reasonable cause to supply or to assist in supplying the labourers required of him
- (9) being a labourer liable to supply his labour under Part VIII of this Act neglects without reasonable cause so to supply, and to continue to supply his labour
- (10) destroys or moves any level mark or water gauge fixed by the authority of a public servant
- (11) passes or causes animals or vehicles to pass on or across any of the works banks or channels of a canal or drainage work contrary to rules made under this Act after he has been desired to desist therefrom
- (12) violates any rule made under this Act for breach whereof a penalty may be incurred

shall be liable on conviction before a Magistrate of such class as the ¹[Provincial Government] directs ²in this behalf to a fine not exceeding fifty rupees or to imprisonment not exceeding one month or to both

71 Nothing herein contained shall prevent any person from being prosecuted under any other law for any offence punishable under this Act

Provided that no person shall be punished twice for the same offence

¹ Substituted by the A. O. for L. G.

² For notification empowering Magistrates of the second class to try offences under this section see Lunjail Local Rules and Orders

(Part X —Of Offences and Penalties Part XI —Of Subsidiary Rules)

Compensation to person injured

72 Whenever any person is fined for an offence under this Act, the Magistrate may direct that the whole or any part of such fine may be paid by way of compensation to the person injured by such offence.

Power to arrest without warrant

73 Any person in charge of or employed upon any canal or drainage work may remove from the lands or buildings belonging thereto, or may take into custody without a warrant and take forthwith before a Magistrate or to the nearest police station, to be dealt with according to law, any person who, within his view, commits any of the following offences —

- (1) wilfully damages or obstructs any canal or drainage-work;
- (2) without proper authority interferes with the supply or flow of water in or from any canal or drainage-work, or in any river or stream, so as to endanger, damage or render less useful any canal or drainage-work.

Definition of "canal"

74 In this Part the word 'canal' shall (unless there be something repugnant in the subject or context) be deemed to include also all lands occupied by ¹[the Provincial Government] for the purposes of canals, and all buildings, machinery, fences, gates and other erections, trees, crops, plantations or other produce occupied by or belonging to ²[the Provincial Government] upon such lands.

PART XI

OF SUBSIDIARY RULES

Power to make, alter and cancel rules

75 The ²[Provincial Government] may, from time to time ³* * * make rules ⁴to regulate the following matters —

- (1) the proceedings of any officer who, under any provision of this Act, is required or empowered to take action in any matter,
- (2) the cases in which, and the officers to whom, and the conditions subject to which, orders and decisions given under any provision of this Act, and not expressly provided for as regards appeal, shall be appealable,
- (3) the persons by whom, ⁵[and] the time, place or manner at or in which anything for the doing of which provision is made under this Act, shall be done,

¹ Subs. by the A. O. for "Govt."

² Subs. by the A. O. for "L. G."

³ The words "subject to the control of the G. G. in C." rep. by the Devolution Act, 1920 (38 of 1920).

⁴ For such rules, see the Punjab and U. P. R. and O.

⁵ Ins. by the Amending Act, 1891 (12 of 1891).

(Part XI—Of Subsidiary Rules)

1873 Act X] Oaths

(4) the amount of any charge made under this Act, and

(5) generally to carry out the provisions of this Act

The [Provincial Government] may from time to time ² * * *
alter or cancel any rules so made

Such rules alterations and cancellments shall be published in the ¹ *Publicat* n
[Official Gazette] and shall thereupon have the force of law ^{of rule} s

SCHEDULE

[Repealed by the Repealing Act 1873 (VII of 1873) s 1 and Sch
Pt II]

THE INDIAN OATHS ACT 1873

CONTENTS

PREAMBLE

SECTIONS

I — Preliminary

- 1 Short title
- Local extent
- 2 [Repealed]
- 3 Saving of certain oaths and affirmations

II—Authority to administer Oaths and Affirmations

- 4 Authority to administer oaths and affirmations

III—Persons by whom Oaths or Affirmations must be made

- 5 Oaths or affirmations to be made by—
witnesses
interpreters
jurors

- 6 Affirmation by Natives or by persons objecting to oaths

IV—Forms of Oaths and Affirmations

- 7 Form of oaths and affirmation
- 8 Power of Court to tender certain oaths
- 9 Court may ask party or witness whether he will make oath proposed by opposite party
- 10 Administration of oath if accepted
- 11 Civil consequences against person offering to be bound
- 12 Procedure in case of refusal to make oath

¹ Subs by the A O for 1873² The words "subject to the like control" repealed by the Dissolution Act 1900 (33 of 1900)³ Subs by the A O for Local Official Gazette

SECTIONS

V—Miscellaneous

- 13 Proceedings and evidence not invalidated by omission of oath or irregularity
- 14 Persons giving evidence bound to state the truth
- 15 [Repealed]
- 16 Official oaths abolished

SCHEDULE—[Repealed]

ACT No X of 1873¹

[8th April 1873]

An Act to consolidate the law relating to Judicial Oaths and for other purposes

Preamble WHEREAS it is expedient to consolidate the law relating to judicial oaths affirmations and declarations and to repeal the law relating to

¹ For the Statement of Objects and Reasons see Gazette of India 1873 Pt V p 17, for Proceedings in Council see *ibid* 1872 Supplement p 839 *ibid* 1873 Supplement pp 3 233 235 to 246 281 395 and 410, *ibid* 1873 Extra Supplement, pp 1 to 8

For civil rules of practice made by the High Court of Madras under this Act the Code of Civil Procedure (Act 14 of 1887) and certain other Acts for observance by subordinate Civil Courts in that presidency except the Small Cause Court at Madras see Fort St George Gazette 1905 Suppl p 1

This Act has been declared to be in force in—

the Sonthāl Parganas by the Sonthāl Parganas Settlement Regulation (3 of 1872) s 3

British Baluchistan by the British Baluchistan Laws Regulation 1913 (2 of 1913) s 3

Panth Piploda by the Panth Piploda Laws Regulation 1929 (1 of 1929) s 2
Khondmals District by the Khondmals Laws Regulation 1936 (4 of 1936) s 3 and Sch

Angul District by the Angul Laws Regulation 1936 (5 of 1936) s 3 and Sch

It has further been declared by notification under s 3 (a) of the Scheduled Districts Act 1874 (14 of 1874) to be in force in the following Scheduled Districts, namely—

The Districts of Hazaribagh Lohardaga and Manbhum and Pargana Dhalbhum and the Kolhan in the District of Singhbhum (The District of Lohardaga then included the Palamau District separated in 1891 Lohardaga is now called the Ranchi District see Calcutta Gazette 1899 Pt I p 44)

The North Western Provinces Tara.

The Scheduled Districts in Ganjam and Vizagapatnam

See Gazette of India 1881 Pt I p 704

See Gazette of India 1876 Pt I p 505

See Fort St George Gazette 1898 Pt I, p 666 and Gazette of India 1898 Pt I, p 869

It has been extended by notification under s 5 of the same Act to the Scheduled District of Coorg See Gazette of India 1876 Pt I p 417

(I—Preliminary II—Authority to administer Oaths and Affirmations)

official oaths affirmations and declarations It is hereby enacted as follows —

I—Preliminary

1 This Act may be called the Indian Oaths Act, 1873

Short title

It extends to the whole of British India and, so far as regards
 1[British subjects to all Indian States]

Local
 extent

2* * * *

2 [Repeal of enactments] Rep by the Repealing Act, 1873 (XII of 1873)

3 Nothing herein contained applies to proceedings before Courts Martial, or to oaths, affirmations or declarations prescribed 3[by or under any Instruction under the Royal Sign Manual of His Majesty or] by any law which 4[no legislature or authority in British India has power to repeal]

Saving of
 certain
 oaths
 and affirma-
 tions

II—Authority to administer Oaths and Affirmations

4 The following Courts and persons are authorized to administer, by themselves or by an officer empowered by them in this behalf, oaths and affirmations in discharge of the duties or in exercise of the powers imposed or conferred upon them respectively by law —

Authority
 to
 administer
 oaths and
 affirma-
 tions

(a) all Courts and persons having by law or consent of parties authority to receive evidence,

(b) the Commanding Officer of any military, 5[naval], 6[or air force] station 5[or ship] occupied by troops in the service of Her Majesty

Provided—

(1) that the oath or affirmation be administered within the limits of the station, and

(2) that the oath or affirmation be such as a Justice of the Peace is competent to administer in British India

¹ Subs by the A O for subjects of Her Majesty, to the territories of Native Princes and States in alliance with Her Majesty

² The commencement clause was rep by the Repealing Act 1876 (12 of 1876)

³ Ins by the Indian Oaths (Amendment) Act 1919 (6 of 1919) s 2.

⁴ Subs by the A O for under the provisions of the Indian Councils Act 1861, the G G in C has not power to repeal

⁵ Ins by the Amending Act 1934 (35 of 1934) s 2 and Sch.

⁶ Ins by the Repealing and Amending Act 1927 (10 of 1927) s 2 and Sch. I

(III.—Persons by whom Oaths or Affirmations must be made IV.—Forms of Oaths and Affirmations)

III —Persons by whom Oaths or Affirmations must be made

5. Oaths or affirmations shall be made by the following persons —

(a) all witnesses that is to say, all persons who may lawfully be examined, or give, or be required to give, evidence by or before any Court or person having by law or consent of parties authority to examine such persons or to receive evidence.

(b) interpreters of questions put to, and evidence given by, witnesses and

jurors

Nothing herein contained shall render it lawful to administer, in a criminal proceeding, an oath or affirmation to the accused person, or necessary to administer to the official interpreter of any Court, after he has entered on the execution of the duties of his office, an oath or affirmation that he will faithfully discharge those duties

6 Where the witness, interpreter or juror is a Hindu or Muhammadan,

or has an objection to making an oath,

he shall, instead of making an oath, make an affirmation

In every other case the witness, interpreter or juror shall make an oath

IV —Forms of Oaths and Affirmations

7. All oaths and affirmations made under section 5 shall be administered according to such forms as the High Court may from time to time prescribe

And until any such forms are prescribed by the High Court, such oaths and affirmations shall be administered according to the forms now in use

1* * * *

8 If any party to or witness in any judicial proceeding offers to give evidence on oath or solemn affirmation in any form common amongst or held binding by persons of the race or persuasion to which he belongs, and not repugnant to justice or decency and not purporting to affect any third person the Court may, if it think fit notwithstanding anything hereinbefore contained, tender such oath or affirmation to him

9 If any party to any judicial proceeding offers to be bound by any such oath or solemn affirmation as is mentioned in section 8, if such

¹ The explanation to section 7 was rep by the Lower Burma Courts Act 1900 (6 of 1900), s 48 and Sch 2

Oaths or affirmations to be made by—
witnesses,

interpreters,

jurors

Affirmation by Natives or by persons objecting to oaths

Forms of oaths and affirmations

Power of Court to tender certain oaths

Court may ask party or witness

(IV —Forms of Oaths and Affirmations V —Miscellaneous)

oath or affirmation is made by the other party to, or by any witness in, such proceeding, the Court may, if it thinks fit, ask such party or witness, or cause him to be asked, whether or not he will make the oath or affirmation

whether he will make oath proposed by opposite party

Provided that no party or witness shall be compelled to attend personally in Court solely for the purpose of answering such question

10 If such party or witness agrees to make such oath or affirmation, the Court may proceed to administer it or, if it is of such a nature that it may be more conveniently made out of Court the Court may issue a commission to any person to administer it and authorize him to take the evidence of the person to be sworn or affirmed and return it to the Court

Administration of oath if accepted

11 The evidence so given shall be against the person who offered to be bound as aforesaid be conclusive proof of the matter stated

Evidence conclusive as against person offering to be bound

12 If the party or witness refuses to make the oath or solemn affirmation referred to in section 8 he shall not be compelled to make it, but the Court shall record as part of the proceedings the nature of the oath or affirmation proposed, the facts that he was asked whether he would make it, and that he refused it together with any reason which he may assign for his refusal

Procedure in case of refusal to make oath

I —Miscellaneous

13 No omission to take any oath or make any affirmation no substitution of any one for any other of them and no irregularity whatever, in the form in which any one of them is administered shall invalidate any proceeding or render inadmissible any evidence whatever, in or in respect of which such omission substitution or irregularity took place, or shall affect the obligation of a witness to state the truth

Proceedings and evidence not invalid dated by omission of oath or irregularity

14 Every person giving evidence on any subject before any Court or person hereby authorized to administer oaths and affirmations shall be bound to state the truth on such subject¹

Persons giving evidence bound to state the truth

15 [Amendment of Penal Code, ss 178 and 181] Rep by the Repealing Act, 1938 (I of 1938), s 2 and Sch

¹ Cf the Indian Penal Code (Act 45 of 1860) s 191

(V.—Miscellaneous.)

N -W. Provinces Village and Road Police. [1873 : Act XVI.]

(I —Preliminary)

Official
oaths
abolished

16. Subject to the provisions of sections 3 and 5, no person appointed to any office shall, before entering on the execution of the duties of his office, be required to make any oath, or to make or subscribe any affirmation or declaration whatever

SCHEDULE

[Rep by the Repealing Act, 1873 (XII of 1873).]

THE NORTH-WESTERN PROVINCES VILLAGE AND ROAD POLICE ACT, 1873

ACT No XVI of 1873 ¹

[21st November, 1873.]

An Act to consolidate and amend the law relating to Village and Road Police in the North-Western Provinces

Preamble

WHEREAS it is expedient to consolidate and amend the law relating to the village and road police in the North-Western Provinces of the Presidency of Fort William in Bengal, It is hereby enacted as follows —

I —Preliminary

Short title

1 This Act may be called the North-Western Provinces Village and Road Police Act, 1873

Local
extent

2 [This Act extends only to the ³territories which were on the 21st of November, 1873, under the government of the Lieutenant Governor of the North-Western Provinces]

4* * * * *

2 [Repeal of enactments] Rep by the Repealing Act, 1874 (XVI of 1874)

¹ For Statement of Objects and Reasons, see Gazette of India, 1873, Pt V, p 114, for Proceedings in Council see *ibid*, Supplement, pp 375 408, *ibid*, Extra Supplement, dated 26th April 1873 p 8, and *ibid*, Supplement, 1873, pp 1299 and 1319

This Act has been declared, by notification under the Scheduled Districts Act, 1874 (14 of 1874) to be in force in the Tarai Parganas

² Subs by the A O for the original paragraph

³ Now the Province of Agra in the U P

⁴ The commencement clause was rep by the Repealing Act, 1876 (12 of 1876)

(II—Appointment of Village Police III—Appointment of Road Police IV—Duties of Village and Road Police)

II—Appointment of Village Police

3 The nomination to the post of village policeman shall be made by the zamindar of the village, or, where there are more zamindars than one, by the lambardar as their representative, and, where there are more lambardars than one, the opinion of the majority (unless there is some special provision to the contrary in the village administration paper) shall prevail

Right of nomination of village policemen

4 Every person authorized to nominate to the office of village-policeman shall, within fifteen days after the occurrence of a vacancy in such office, nominate a proper person to the vacant post and communicate the nomination to the Magistrate of the district

Obligation to nominate

5 The person so nominated shall after due enquiry into his age, character and ability be appointed or rejected ¹[by the Provincial Government]

Discretion to appoint or reject nominee

6 (a) In default of such nomination within the said fifteen days, ²[the Provincial Government] shall appoint such person as ³[it] thinks fit to the vacancy

Power to Magistrate to appoint

(b) If nomination has been made within the said fifteen days but the nominee is rejected the person authorized to nominate shall, within fifteen days from the date of such rejection nominate another person to the vacant post, and in default of such nomination, or if such nomination has been made but the nominee is again rejected, ²[the Provincial Government] shall appoint such person as ³[it] thinks fit to the vacancy

Procedure in case of rejection of nominee

III—Appointment of Road Police

7 Subject to the rules to be framed under section 14, and for the time being in force, ²[the Provincial Government] may, from time to time, appoint persons to be ⁴[road police]

Appointment of road police

IV—Duties of Village and Road Police

8. Every village policeman and every road policeman shall perform the following duties —

Duties of village and road policemen

(a) He shall give immediate information to the officer in charge of the police station appointed for his village or beat—

(1) of every unnatural, suspicious or sudden death occurring in the village of which he is chaukidar, or within his beat,

¹ Subs by the A O for at discretion by such Magistrate or by some officer authorized by him in that behalf C of the G of I Act 1935 s 241 (1) (b) and the General Clauses Act 1897 (10 of 1897) s 4 A (2)

² Subs by the A O for the Magistrate of the District

³ Subs by the A O for 'he'

⁴ Subs by the A O for the road police of his district

(IV—Duties of Village and Road Police V—Liabilities of Village and Road Police)

(2) of each of the following offences occurring in such village or on such beat (that is to say), murder, culpable homicide, rape, dacoity, theft, robbery, mischief by fire, house breaking, counterfeiting coin, causing grievous hurt, riot, harbouring a proclaimed offender, exposure of a child, concealment of birth, administering stupefying drugs, kidnapping, lurking house-tie pass, and

(3) of all attempts and preparations to commit, and abetments of any of the said offences.

(a) He shall keep the police informed of all disputes which are likely to lead to any riot or serious affray.

(c) He shall arrest all proclaimed offenders, and all persons whom he may find in the act of committing any offence specified in paragraph (a) clause (2), of this section.

(d) He shall observe and from time to time report to the officer in charge of the police station within the jurisdiction of which his village or beat may be situate the movements of all bad characters in or on such village or beat.

(e) He shall report to the officer in charge of such police station the arrival of suspicious characters in the neighbourhood.

(f) He shall supply to the best of his ability any local information which a Magistrate or any officer of police may require, and shall promptly execute all orders issued to him by competent authority.

9 Whenever a village policeman or road policeman arrests any person he shall take him as soon as possible, to the police station within the jurisdiction of which his village or beat is situate.

V—Liabilities of Village and Road Police

10 The Magistrate of the district may dismiss any village policeman or road policeman for any misconduct or neglect of duty.

11 Every village policeman and every road policeman guilty of any wilful misconduct in his office, or of neglect of duty such misconduct

Dismissal
on arrest
by village
or road
policeman

Acts
punishable

(I —Liabilities of Village and Road Police) I —Miscellaneous)

50 or neglect not being an offence within the meaning of the Indian Penal Code

or withdrawing from the duties of his office without permission, and without having given at least two months notice of his intention to withdraw from such duties to the persons authorized to nominate or appoint under sections 3 and 7 (as the case may be)

or offering any unnecessary personal violence to any person in his custody,

or violating any of the rules framed under section 11 and for the time being in force

shall be liable on conviction before a Magistrate to a penalty not exceeding three months pay or to imprisonment for a period not exceeding three months or to both Penalty

12 All fines levied under this Act on village policemen or road police men shall be credited to such fund as the ¹[Provincial Government] from time to time appoints Fines to be credited to such fund as Government appoints

VI —Miscellaneous

13 All orders of, ²[and appointments made by] the Magistrate of the district under section 2[5 6 7 or] 10 shall be subject to control revision and alteration by the Commissioner to whom he is subordinate Orders of Magistrate of district subject to control of Commissioner

14 The ¹[Provincial Government] may from time to time frame ³rules— Power to make subsidiary rules

(a) for the discipline of the village and road police

(b) for regulating their numbers, location and duties, and

(c) for carrying out generally the purposes of this Act

¹ Subs. by the A. O. for L. G.

² In view of the amendments of ss. 5, 6 and 7 made by the A. O. the bracketed portions require to be repealed.

³ For rules see the U. P. R. & O.

(I—Preliminary)

THE MARRIED WOMEN'S PROPERTY ACT, 1874

ACT No III OF 1874¹

[24th February, 1874]

An Act to explain and amend the law relating to certain married women, and for other purposes

Preamble WHEREAS it is expedient to make such provision as hereinafter appears for the enjoyment of wages and earnings by women married before the first day of January 1866 and for insurances on lives by persons married before or after that day

And whereas by the Indian Succession Act, 1865,² section 4, it is enacted that no person shall by marriage acquire any interest in the property of the person whom he or she marries, nor become incapable of doing any act in respect of his or her own property, which he or she could have done if unmarried

And whereas by force of the said Act all women to whose marriages it applies are absolute owners of all property vested in, or acquired by, them, and their husbands do not by their marriage acquire any interest in such property, but the said Act does not protect such husbands from liabilities on account of the debts of their wives contracted before marriage, and does not expressly provide for the enforcement of claims by or against such wives

It is hereby enacted as follows —

I—Preliminary

Short title 1 This Act may be called the Married Women's Property Act, 1874

¹ For the Statement of Objects and Reasons see Gazette of India 1873 Pt V, p 457, for Proceedings in Council see *ibid* Extra Supplements dated 2nd August and 6th September 1873 respectively pp 9 and 12 and *ibid* 1874 Supplement p 239

The Act has been declared to be in force in—

the Sonthal Parganas see the Sonthal Parganas Settlement Regulation (3 of 1872) s 3

It has been declared by notification under s 3 (a) of the Scheduled Districts Act 1874 (14 of 1874) to be in force in the following Scheduled Districts namely —

the Districts of Hazaribagh Lohardaga and Minihum and Pargana Dhalbhum and the Kolhan in the District of Singhbhum see Gazette of India 1881 Pt I p 504 The District of Jharkhand included at this time the Palamau District which was separated in 1894 Lohardaga is now called the Ranchi District see Calcutta Gazette 1899 Pt I p 44

It has been extended by notification under s 5 of the same Act to the Scheduled District of the North Western Provinces Tarai see Gazette of India 1876 Pt I p 505

² See now the Indian Succession Act 1925 (39 of 1925)

(I.—Preliminary II —Married Women's Wages and Earnings)

2. It extends to the whole of British India, and, so far as regards Extent
and
application
¹[British subjects, to all Indian States]

But nothing herein contained applies to any married woman who at the time of her marriage professed the Hindu, Muhammadan, Buddhist, Sikh or Jaina religion, or whose husband, at the time of such marriage, professed any of those religions

And the ²[Provincial Government] may from time to time, by order, either retrospectively from the passing of this Act or prospectively, exempt from the operation of all or any of the provisions of this Act the members of any race, sect or tribe, or part of a race, sect or tribe, to whom ³[it] may consider it impossible or inexpedient to apply such provisions.

The ²[Provincial Government] may also revoke any such order, but not so that the revocation shall have any retrospective effect

All orders and revocations under this section shall be published in the ⁴[Official Gazette].

5*

3 [Commencement] Rep by the Repealing Act, 1876 (XII of 1876)

II —Married Women's Wages and Earnings

⁶4. The wages and earnings of any married woman acquired or gained by her after the passing of this Act, in any employment, occupation or trade carried on by her and not by her husband, Married
women's
earnings to
be their
separate
property

and also any money or other property so acquired by her through the exercise of any literary, artistic or scientific skill,

and all savings from and investments of such wages, earnings and property,

shall be deemed to be her separate property, and her receipts alone shall be good discharges for such wages, earnings and property

¹ Subs by the A O for 'subjects of Her Majesty, to the dominions of Princes and States in India in alliance with Her Majesty

² Subs by the A O for 'L G' which was subs for the words 'G G in C' by s 2 and Sch I of the Devolution Act 1920 (38 of 1920)

³ Subs by the A O for he

⁴ Subs by the A O for the words local official Gazette which had been subs for the words Gazette of India by s 2 and Sch I of the Devolution Act 1920 (38 of 1920)

⁵ The last paragraph of s 2 was omitted by the Indian Succession Act, 1925 (39 of 1925) s 392 and Sch IX

⁶ Of the Married Women's Property Act, 1876 (33 and 34 Vict, c 93) s 1 now repealed by the Married Women's Property Act, 1882 (45 and 46 Vict, c. 75)

(III—Insurance by Wives and Husbands)

III—Insurance by Wives and Husbands

Married woman may effect policy of insurance

15 Any married woman may effect a policy of insurance on her own behalf and independently of her husband, and the same and all benefit thereof, if expressed on the face of it to be so effected, shall enure as her separate property and the contract evidenced by such policy shall be as valid as if made with an unmarried woman

Insurance by husband for benefit of wife

26 3[(1)] A policy of insurance effected by any married man on his own life and expressed on the face of it to be for the benefit of his wife, or of his wife and children or any of them, shall enure and be deemed to be a trust for the benefit of his wife, or of his wife and children, or any of them according to the interest so expressed and shall not, so long as any object of the trust remains, be subject to the control of the husband or to his creditors or form part of his estate

When the sum secured by the policy become payable, it shall unless special trustees be duly appointed to receive and hold the same, be paid to the Official Trustee of the ⁴[Province] in which the office at which the insurance was effected is situate, and shall be received and held by him upon the trusts expressed in the policy, or such of them as are then existing

And in reference to such sum he shall stand in the same position in all respects as if he had been duly appointed trustee thereof by a High Court under Act No XXII of 1864 ⁵[to constitute an Office of Official Trustee] section 10

Nothing herein contained shall operate to destroy or impede the right of any creditor to be paid out of the proceeds of any policy of insurance which may have been effected with intent to defraud creditors

6[(2)] Notwithstanding anything contained in section 2, the provisions of sub section (1) shall apply in the case of any policy of insurance such as is referred to therein which is effected by any Hindu, Muhammadan, Sikh or Jain in Madras after the thirty first day of December 1913, or in any other part of British India after the first day of April 1923

Provided that nothing herein contained shall affect any right or liability which has accrued or been incurred under any decree of a competent Court passed before the first day of April, 1923]

¹ Cf. the Married Women's Property Act 1870 (33 and 34 Vict., c. 93), s. 10, para. 1

² Cf. ibid. para. 2

³ Enumerated by the Married Women's Property (Amendment) Act, 1923 (15 of 1923) s. 2

⁴ Subs. by the A.O. for Presidency

⁵ See now the Official Trustees Act 1913 (2 of 1913)

⁶ Ins. by the Married Women's Property (Amendment) Act 1923 (15 of 1923) s. 2

(IV) — *Legal Proceedings by and against Married Women* V — *Husband's liability for Wife's debts*)

IV — *Legal Proceedings by and against Married Women*

17 A married woman may maintain a suit in her own name for the recovery of property of any description which by force of the said Indian Succession Act, 1865,² or of this Act is her separate property, and she shall have, in her own name the same remedies both civil and criminal against all persons, for the protection and security of such property as if she were unmarried and she shall be liable to such suits, processes and orders in respect of such property as she would be liable to if she were unmarried

Married woman may take legal proceedings

8 If a married woman (whether married before or after the first day of January 1866) possesses separate property and if any person enters into a contract with her with reference to such property, or on the faith that her obligation arising out of such contract will be satisfied out of her separate property such person shall be entitled to sue her and to the extent of her separate property to recover against her whatever he might have recovered in such suit had he been unmarried at the date of the contract and continued unmarried at the execution of the decree

Wife's liability for postnuptial debts

3[Provided that nothing herein contained shall—

(a) entitle such person to recover anything by attachment and sale or otherwise out of any property which has been transferred to a woman or for her benefit on condition that she shall have no power during her marriage to transfer or charge the same or to alienate it therein or

(b) affect the liability of a husband for debts contracted by his wife's agency express or implied.]

V — *Husband's liability for Wife's debts*

49 A husband married after the thirty first day of December, 1865, shall not by reason only of such marriage be liable to the debts of his wife contracted before marriage, but the wife shall be liable to be sued

Husband not liable for wife's antenuptial debts

¹ Cf. the Married Women's Property Act 1870 (33 and 34 Vict. c. 93) s. 11, rep. by the Married Women's Property Act 1882 (45 and 46 Vict. c. 75).

² See now the Indian Succession Act 1925 (39 of 1925).

³ Substituted by the Transfer of Property (Amendment) Supplementary Act 1929 (21 of 1929) s. 2. The original proviso read: "Provided that nothing herein contained shall affect the liability of a husband for debts contracted by his wife's agency, express or implied [or render a married woman liable to arrest or to imprisonment in execution of a decree]." The words in brackets had been rep. by s. 9 of the Debtors Act 1869 (36 of 1869).

⁴ Cf. the Married Women's Property Act 1870 (33 and 34 Vict. c. 93) s. 12.

(V.—Husband's liability for Wife's debts. VI.—Husband's liability for Wife's breach of trust or devastation)

Foreign Recruiting.

[1874: Act IV.]

for, and shall, to the extent of her separate property, be liable to satisfy such debts as if she had continued unmarried

Proviso

Provided that nothing contained in this section shall * * * * * invalidate any contract into which a husband may, before the passing of this Act, have entered in consideration of his wife's antenuptial debts.

2[VI.—Husband's liability for Wife's breach of trust or devastation.

Extent of husband's liability for wife's breach of trust or devastation

10 Where a woman is a trustee, executrix or administratrix, either before or after marriage, her husband shall not, unless he acts or intermeddles in the trust or administration, be liable for any breach of trust committed by her, or for any misapplication, loss or damage to the estate of the deceased caused or made by her, or for any loss to such estate arising from her neglect to get in any part of the property of the deceased]

THE FOREIGN RECRUITING ACT, 1874.

ACT No IV OF 1874.³

[21th February, 1874.]

An Act to control recruiting in British India for the service of Foreign States

Preamble

WHEREAS it is expedient that the Governor General in Council should exercise full control over recruiting in British India for the service of Foreign States, It is hereby enacted as follows —

Short title

1 This Act may be called the Foreign Recruiting Act, 1874

¹ The words "affect any suit instituted before the passing of this Act, nor" rep by the Amending Act, 1891 (12 of 1891)

² Ins by the Indian Succession (Amendment) Act, 1927 (18 of 1927), s 3

³ For the Statement of Objects and Reasons, see Gazette of India, 1874, Pt V, p 1, for Proceedings in Council, see *ibid*, 1873, Supplement, p 1300, *ibid*, 1874, Supplement, pp 12 and 240

This Act has been declared to be in force in British Baluchistan by the British Baluchistan Laws Regulation, 1913 (2 of 1913) s 3

It has been declared, by notification under s 3 (a) of the Scheduled Districts Act, 1874 (14 of 1874), to be in force in the following Scheduled Districts, namely —

the Districts of Hazaribagh, Lohardaga and Manbhum, and Pargana Dhal bhum and the Kolhan in the District of Singhbhum see Gazette of India, 1881, Pt I, p 504 The District of Lohardaga included at this time the Palamu District, which was separated in 1894, Lohardaga is now called the Ranchi District, see Calcutta Gazette, 1899, Pt I, p 44

It has been extended, by notification under s 5 of the same Act, to the Scheduled District of the North Western Provinces Tardi, see Gazette of India, 1876, Pt I, p 505

The Foreign Enlistment Act, 1870 (33 and 34 Vict, c 90), applies only when the recruiting is for the service of any foreign State at war with any foreign State at peace with Her Majesty

It extends to the whole of British India

Local
extent

1*

2 In this Act—

Foreign
State
defined

Foreign State includes any person or persons exercising or assuming to exercise the powers of Government in or over any country, colony, province or people beyond the limits of British India

3 If any person is within the limits of British India obtaining or attempting to obtain recruits for the service of any Foreign State in any capacity, the ²[Central Government] may by order in writing ³*, either prohibit such person from so doing or permit him to do so subject to any conditions which the ²[Central Government] thinks fit to impose

Power to
prohibit
or permit
recruiting

4 The ²[Central Government] may from time to time by general order notified in the ⁴[Official Gazette] either prohibit recruiting for the service of any Foreign State or impose upon such recruiting any conditions which ⁵[it] thinks fit

Power to
impose
conditions

5 The ²[Central Government] may rescind or vary any order made under this Act in such manner as ⁵[it] thinks fit

Power to
rescind
or vary
orders.
Offences

6 Whoever in violation of the prohibition of the ²[Central Government] or of any condition subject to which permission to recruit may have been accorded—

(a) induces or attempts to induce any person to accept or agree to accept or to proceed to any place with a view to obtaining any commission or employment in the service of any Foreign State or

(b) knowingly aids in the engagement of any person so induced, by forwarding or conveying him or by advancing money or in any other way whatever

shall be liable to imprisonment for a term which may extend to seven years or to fine to such amount as the Court thinks fit or to both

7 Any offence against this Act may be inquired into and tried, as well in any district in which the person accused may be found as in any district in which it might be inquired into and tried under the provisions of the Code of Criminal Procedure ⁶

Place
of trial

¹ The commencement clause was rep. by the Repealing Act 18 6 (12 of 1876)

² Subs. by the A O for G G in C

³ The word is given by a Secretary to the G of I rep. by the A O

⁴ Subs. by the A O for Gazette of India

⁵ Subs. by the A O for do

⁶ See now the Code of Criminal Procedure 1893 (Act 5 of 1893)

THE EUROPEAN VAGRANCY ACT, 1874

 CONTENTS

PREFAMBLE

PART I

PRELIMINARY

SECTIONS

- 1 *Short title*
Local extent
Commencement
- 2 [*Repealed*]
- 3 Interpretation clause

 PART II

PROCEDURE

- 4 Power to require apparent vagrant to go before Magistrate
- 5 Summary inquiry into vagrant's circumstances
Declaration of vagrancy
Order to go to work house
- 6 Forwarding vagrant to place of employment
- 7 Assistance to obtain employment
- 8 Subsistence allowance
- 9 Power to give certificates
Form of certificate
- 10 Power to invest certain officials with jurisdiction of Magistrates
under sections 5, 7, 8 and 9

 PART III

GOVERNMENT WORKHOUSES

- 11 Provision of Government work houses
Scale of diet
- 12 Superintendence of work houses
- 13 Search of vagrants
- 14 Discipline
- 15 Refusal to accept employment

PART IV

REMOVAL FROM INDIA

SECTIONS

- 16 Removal of vagrants
 - Cost of removal
- 17 Agreements with vagrants
 - Form of agreement
- 18 [*Repealed*]

 PART V

PENALTIES

- 19 Refusal to go before Magistrate
 - Assaulting police
- 20 Escaping from police
 - Quitting workhouse without leave
 - Failing to return to workhouse
- 21 Failing to proceed to port of embarkation
 - Refusing to go on board ship
 - Escaping from ship
- 22 Returning to India
- 23 Begging
- 24 Procedure on close of imprisonment
- 25 Penalty on shipmaster bringing European convicts to India
 - Power to exempt certain shipmasters
- 26 Payment of fines
- 27 Prosecutions
- 28 Limits of jurisdiction
- 29 Validity of proceedings where Magistrate is not the nearest

 PART VI

MISCELLANEOUS

- 30 Deprivation of privileges of European British subjects under Criminal Procedure Code

SECTIONS

- 31 Liability of importers of Europeans or employers of soldiers becoming vagrants
Recovery of charges
- 32 Liability of consignee in case of Europeans who arrive in charge of animals and become vagrants
"Consignee" defined
"Agent" defined
- 33 Evidence of declaration under section 5
- 34 Exercise of powers conferred on Central Government.
- 35 Exercise in Indian States of powers conferred on Magistrates and Police
- 36 Power to make rules for guidance of officers

THE FIRST SCHEDULE —FORM OF CERTIFICATE

THE SECOND SCHEDULE —FORM OF AGREEMENT

ACT No IX of 1874¹

[7th April, 1874.]

An Act to consolidate and amend the Law relating to European Vagrancy

Preamble

WHEREAS it is expedient to consolidate and amend the laws relating

¹ For the Statement of Objects and Reasons see Gazette of India, 1873, Pt V, p 399, for Proceedings in Council, see *ibid*, 1874, Extra Supplement, August 23rd, pp 10 and 14; *ibid*, 1874, Supplement, pp 323 and 412

This Act has been declared to be in force in—

Sonthal Parganas by the Sonthal Parganas Settlement Regulation, (3 of 1872),
British Baluchistan, by the British Baluchistan Laws Regulation, 1913 (2 of 1913),

Khondmals District, by the Khondmals Laws Regulation, 1936 (4 of 1936),

Angul District, by the Angul Laws Regulation, 1936 (5 of 1936)

It has been declared, by notification under s 3 (a) of the Scheduled Districts Act, 1874 (14 of 1874), to be in force in the following Scheduled Districts, namely —

the Districts of Hazaribagh Lohardaga and Manbhum and Pargana Dhalbhum and the Kolhan in the District of Singhbhum, see Gazette of India, 1891, Pt I, p 504 The Lohardaga District at this time included the Palamau District, Lohardaga is now called the Ranchi District, see Calcutta Gazette, 1899, Pt I, p 44

(Part I—Preliminary)

to persons of European extraction who wander in a destitute condition throughout India; It is hereby enacted as follows —

PART I

PRELIMINARY

1 This Act may be called the European Vagrancy Act, 1874

Short title

It extends to the whole of British India and to ¹[British Subjects in any Indian State],

Local extent

²[And it shall come into force at once

Commencement

Provided that ³sections 4 to 16 (both inclusive), 19, 20, 24 and 29 shall not come into force in Coorg, or in the Andaman and Nicobar Island-, or as regards British subjects in any Indian State, until such day or respective days as the appropriate Government by notification in the Official Gazette appoints in this behalf]

2. [Repeal of Acts] Rep by the Repealing Act, 1938 (I of 1938), s 2 and Sch

3 In this Act—

Interpretation clause
'Appropriate Government'

⁴[the appropriate Government means, in relation to British subjects in any Indian State, the Central Government, and in other cases, the Provincial Government]

⁵"person of European extraction includes—

- (a) persons born in Europe, America, the West Indies, Australia, Tasmania, New Zealand, Natal or the Cape Colony,
- (b) the sons and grandsons of such persons,

Person of European extraction."

but does not include persons commonly called Eurasians or East Indians

It has been extended, by notification under s 5 of the same Act to the Scheduled District of the North Western Provinces Tara see Gazette of India, 1876, Pt I, p 505 and to Ganjam and Vizagapatam, see Port St George Gazette, 1899, Pt I, p 1140

¹ Subs by the A O for the dominions of Princes and States in India in alliance with Her Majesty

² Subs by the A O for original sub paragraphs 3 and 4

³ These sections have been extended to the Indian States within the limits of—

- (1) the Madras Presidency, see Gazette of India, 1870, Pt I, p 723,
- (2) the Lower Provinces of Bengal, see Gazette of India 1870, Pt I, p 723,
- (3) the Central India Agency, see Gazette of India, 1891, Pt I, p 552,
- (4) the Punjab, see Gazette of India, 1872, Pt I, p 183,

and to the Hyderabad State see Gazette of India, 1890, Pt I, p 527

⁴ Ins by the A O

⁵ Of definition of European British subject in the Code of Criminal Procedure, 1898 (Act 5 of 1898) s 4 (1) (i)

(Part I—Preliminary Part II—Procedure)

"Vagrant"

"vagrant" means a person of European extraction found asking for alms, or wandering about without any employment or visible means of subsistence

"Master of a ship"
"Magistrate"

"master of a ship" includes any person in charge of a decked vessel and in Parts III and V of this Act "Magistrate" means, within the limits of the towns of Calcutta, Madras and Bombay, a Magistrate of Police¹ and, outside those limits, a person exercising powers under the Code of Criminal Procedure² not less than those of a Magistrate of the second class

PART II

PROCEDURE

Power to require apparent vagrant to go before Magistrate

4 Any police officer may, within the limits of the towns of Calcutta, Madras and Bombay, require any person who is apparently a vagrant to accompany him or any other police officer to, and to appear before, the nearest Magistrate of Police¹ and may, without those limits, require any such person to accompany him or any other police officer to, and to appear before ³[the nearest magistrate of the first class]

Summary inquiry into vagrant's circumstances Declaration of vagrancy

5 The Magistrate of Police¹ or ⁴[Magistrate of the first class] shall in such case or in any other case where a person apparently a vagrant comes before him make a summary inquiry into the circumstances and character of the apparent vagrant and if he is satisfied that such person is a vagrant he shall record in his office a declaration to that effect

Order to go to workhouse

If he is further of opinion that the vagrant is not likely to obtain employment at once, or if he has reason to believe that a declaration of vagrancy has on any former occasion been recorded in respect of such vagrant he shall require the vagrant to go to a Government workhouse, and shall draw up an order to that effect

The vagrant shall then be placed in charge of the police for the purpose of being forwarded to the workhouse and the said order shall be a sufficient authority to the police for retaining him in their charge while

¹ Read now Presidency Magistrate see the Code of Criminal Procedure 1898 (Act 5 of 1893) s 3

² See now *ibid*

³ Subs for the nearest Justice of the Peace exercising the powers of a Magistrate of the first class under the Code of Criminal Procedure 1898 s 30 of the Criminal Law Amendment Act 1923 (12 of 1923)

⁴ Subs for Justice by s 36 *ibid*

(Part II —Procedure)

he is on his way to the workhouse and to the Governor of the workhouse for receiving and detaining such vagrant

6 Where the officer making the inquiry mentioned in section 5 is of opinion that the vagrant is likely to obtain employment in any place subject to the ¹[Provincial Government] or (when the vagrant is in ²[any Indian State]) in any place subject to any adjacent ¹[Provincial Government], such officer may in his discretion forward the vagrant to such place in charge of the police, and draw up an order to that effect

Forwarding
vagrant to
place of
employ-
ment

Such order shall be a sufficient authority to the police for retaining the vagrant in their charge while he is on his way to such place of employment

7 Upon his arrival at the place of employment the vagrant shall be taken before the nearest Magistrate of Police³ or ⁴[Magistrate of the first class] to whom the order for transmission shall be delivered

Assistance
to obtain
employ-
ment

Such officer shall thereupon, to the best of his ability, assist the vagrant in seeking employment and may in the meantime if he think fit keep the vagrant in the charge of the police

Should the vagrant fail to obtain suitable employment within a reasonable time not exceeding fifteen days from such arrival such officer shall forward him to a Government workhouse in the manner provided by section 5

8 Every person while in charge of the police whether before inquirv as to his vagrancy, or while he is on his way under section 5, to the workhouse or under section 6 to a place of employment shall be entitled to an allowance for his subsistence at the rate of eight annas per diem

Subsistence
allowance

The Magistrate of Police³ or ⁵[Magistrate of the first class] before whom any vagrant is taken under section 7 may if he think fit order the vagrant to receive a similar allowance while he is seeking employment

The ¹[appropriate Government] shall cause such allowance to be paid out of such funds at its disposal and in such manner as it may from time to time direct

9 Any Magistrate of Police³ or ⁴[Magistrate of the first class] may, on being satisfied that any person of European extraction is not likely to

Power to
give certi-
ficates

¹ Subs by the A O for I G

² Subs by the A O for any part of the dominions mentioned in s 1

³ Read now Presidency Magistrate see s 3 of the Code of Criminal Procedure 1873 (Act 5 of 1898)

⁴ Subs for Justice of the Peace exercising powers as aforesaid by the Criminal Law Amendment Act 1923 (12 of 1923) s 37

⁵ Subs for Justice by s 36 *et seq*

(Part I—Preliminary. Part II.—Procedure.)

"Vagrant "

"vagrant" means a person of European extraction found asking for alms, or wandering about without any employment or visible means of subsistence

"Master of a ship "

"Magis-
trato."

"master of a ship" includes any person in charge of a decked vessel :
and in Parts III and V of this Act "Magistrate" means, within the limits of the towns of Calcutta, Madras and Bombay, a Magistrate of Police¹ and, outside those limits, a person exercising powers under the Code of Criminal Procedure² not less than those of a Magistrate of the second class

PART II

PROCEDURE

Power to
require
apparent
vagrant to
go before
Magistrate

4 Any police-officer may, within the limits of the towns of Calcutta, Madras and Bombay, require any person who is apparently a vagrant to accompany him or any other police-officer to, and to appear before, the nearest Magistrate of Police¹ and may, without those limits, require any such person to accompany him or any other police-officer to, and to appear before, ³[the nearest magistrate of the first class]

Summary
inquiry
into
vagrant's
circum-
stances
Declara-
tion of
vagrancy

5. The Magistrate of Police¹ or ⁴[Magistrate of the first class] shall in such case, or in any other case where a person apparently a vagrant comes before him, make a summary inquiry into the circumstances and character of the apparent vagrant and if he is satisfied that such person is a vagrant, he shall record in his office a declaration to that effect

Order to
go to work
house

If he is further of opinion that the vagrant is not likely to obtain employment at once, or if he has reason to believe that a declaration of vagrancy has on any former occasion been recorded in respect of such vagrant, he shall require the vagrant to go to a Government workhouse, and shall draw up an order to that effect

The vagrant shall then be placed in charge of the police for the purpose of being forwarded to the workhouse, and the said order shall be a sufficient authority to the police for retaining him in their charge while

¹ Read now "Presidency Magistrate," see the Code of Criminal Procedure, 1899 (Act 5 of 1899), s 3

² See now *ibid*

³ Subs for "the nearest Justice of the Peace exercising the powers of a Magistrate of the first class under the Code of Criminal Procedure" by s 32 of the Criminal Law Amendment Act, 1923 (12 of 1923)

⁴ Subs for "Justice" by s 36, *ibid*

(Part II — Procedure)

he is on his way to the workhouse, and to the Governor of the workhouse for receiving and detaining such vagrant

6. Where the officer making the inquiry mentioned in section 5 is of opinion that the vagrant is likely to obtain employment in any place subject to the ¹[Provincial Government] or (when the vagrant is in ²[any Indian State]) in any place subject to any adjacent ¹[Provincial Government], such officer may in his discretion forward the vagrant to such place in charge of the police and draw up an order to that effect

Forwarding
vagrant to
place of
employ-
ment

Such order shall be a sufficient authority to the police for retaining the vagrant in their charge while he is on his way to such place of employment

7 Upon his arrival at the place of employment, the vagrant shall be taken before the nearest Magistrate of Police³ or ⁴[Magistrate of the first class] to whom the order for transmission shall be delivered

Assistance
to obtain
employ-
ment

Such officer shall thereupon, to the best of his ability, assist the vagrant in seeking employment, and may in the meantime if he think fit keep the vagrant in the charge of the police

Should the vagrant fail to obtain suitable employment within a reasonable time not exceeding fifteen days from such arrival such officer shall forward him to a Government workhouse in the manner provided by section 5

8 Every person while in charge of the police whether before inquiry as to his vagrancy, or while he is on his way, under section 5, to the workhouse, or under section 6, to a place of employment, shall be entitled to an allowance for his subsistence at the rate of eight annas per diem

Subsistence
allowance

The Magistrate of Police³ or ⁵[Magistrate of the first class] before whom any vagrant is taken under section 7, may, if he think fit, order the vagrant to receive a similar allowance while he is seeking employment

The ¹[appropriate Government] shall cause such allowance to be paid out of such funds at its disposal and in such manner as it may from time to time direct

9 Any Magistrate of Police³ or ⁴[Magistrate of the first class] may, on being satisfied that any person of European extraction is not likely to

Power to
give certi-
ficates

¹ Subs by the A O for I G

² Subs by the A O for any part of the dominions mentioned in s 1

³ Read now Presidency Magistrate see s 3 of the Code of Criminal Procedure, 1873 (Act 5 of 1898)

⁴ Subs for Justice of the Peace exercising powers as aforesaid by the Criminal Law Amendment Act 1923 (12 of 1923) s 37

⁵ Subs for Justice 1 y s 36 161

(Part II — Procedure Part III — Government Workhouses)

become a vagrant give such person a certificate under his hand stating that for a certain time (mentioning it) not exceeding six months from the date of the certificate and within certain limits (mentioning them), nothing in sections 4, 5, 6 and 7 shall apply to the holder of such certificate and thereupon, so long as the certificate remains in force, nothing in sections 4 5 6 and 7 shall apply to such person within such limits as aforesaid

Form of
certificate

Every such certificate shall be in the form set forth in the first schedule to this Act annexed, or as near thereto as circumstances will admit

Power to
invest
certain
officials
with
jurisdiction
of Magis-
trates under
sections
5, 7, 8
and 9

10 The ¹[appropriate Government] may from time to time, by notification² in the Official Gazette, invest any ³* * * District Superintendent of Police or Assistant District Superintendent of Police with the jurisdiction and powers conferred by this Part on a ⁴[Magistrate of the first class]

PART III

GOVERNMENT WORKHOUSES

Provision
of Gov-
ernment
work-
house

11 The ¹[appropriate Government] ⁵* * * may provide⁶ workhouses with their necessary furniture and establishment, at such places as it may think proper for the temporary reception of vagrants,

or may by writing under the hand of a Secretary to such ⁴Government, certify any building or part of a building not provided as a workhouse under the former part of this section, to be fit for a workhouse for the purposes of this Act Every such certificate shall be published in the ⁷[Official Gazette], and thereupon such building or part of a building shall, until the ¹[appropriate Government] otherwise orders, be deemed a Government workhouse under this Act

Scale of
diet

The ¹[appropriate Government] shall allow the same scale of diet for the support of vagrants received in such workhouses as is for the time being allowed for Europeans confined in the local prisons or penitentiaries

¹ Subs by the A O for L G

² For instance of such notification see Mad R & O

³ The words Justice of the Peace rep by the Criminal Law Amendment Act 1923 (12 of 1923) s 37

⁴ Subs for Justice of the Peace exercising powers as aforesaid by s 37 *ibid*

⁵ The words with the previous sanction of the G G in C rep by s 2 and Part I of the Schedule of the Decentralization Act 1914 (4 of 1914)

⁶ For notifications issued under the powers conferred by this section see different local rules and orders

⁷ Subs by the A O for local official Gazette

(Part III—Government Workhouses)

12 Every such workhouse shall be under the immediate charge of a Governor, who shall be appointed ¹* * * by the ²[appropriate Government] Superintendence of work houses

Every such Governor shall, if the ²[appropriate Government] think fit, be subject to the orders of a Committee of Management appointed from time to time by such Government or, in the absence of a committee, to the orders of such officer as the ²[appropriate Government] from time to time appoints in this behalf

13 Every such Governor may order that any vagrant admitted to the workhouse under his charge shall be searched and that the vagrant's bundles packages and other effects shall be inspected, and may direct that any money then found with or on the vagrant shall be applied (subject to the orders of the ²[appropriate Government]) towards the expense of carrying this Act into execution, and may order that all or any of the said effects shall be sold, and that the produce of the sale be applied as aforesaid, but subject to the like orders Search of vagrants

14 Vagrants admitted to workhouses under this Act shall be subject to such rules³ of management and discipline as may from time to time be prescribed by the ²[appropriate Government] ⁴* * * Discipline

The ²[appropriate Government] may authorize⁵ any Governor of a workhouse to punish (under or not under the supervision and direction of a Committee of Management as the ²[appropriate Government] thinks fit) any vagrant who knowingly disobeys or neglects any such rule with any one of the following punishments (namely) —

- (a) solitary confinement within the workhouse for any time not exceeding seven days
- (b) solitary confinement within the workhouse for any time not exceeding three days upon a diet reduced to such extent as the ²[appropriate Government] may prescribe,
- (c) hard labour for any time not exceeding seven days,
- (d) reduction of diet to such extent as the ²[appropriate Government] may prescribe for any time not exceeding five days;

or in lieu of any such punishment any such vagrant may, on conviction before a Magistrate of such disobedience or neglect, be punishable with rigorous imprisonment in jail for a term which may extend to three months

¹ The words "and may be suspended or removed" rep by the A O

Subs by the A O for L G

³ For notifications prescribing such rules see different local rules and orders.

⁴ The words "subject to the control of the G G in C" rep by s 2 and Sch I of the Devolution Act, 1920 (38 of 1920)

⁵ For notifications conferring such authority in Madras see Mad R & O

(Part III—Government Workhouses Part IV—Removal from India)

Refusal to
accept em-
ployment

15 The Governor and the Committee of Management (if any) of every such workhouse shall use his and their best endeavours to obtain outside the workhouse suitable employment for the vagrants admitted thereto

When such employment is obtained, any such vagrant refusing or neglecting to avail himself thereof shall, on conviction before a Magistrate, be punishable with rigorous imprisonment for a term which may extend to one month

PART IV

REMOVAL FROM INDIA

Removal of
vagrants

16 If after the lapse of a reasonable time no suitable employment is obtainable for any such vagrant, ¹[the Central Government] may either (when he has entered into such agreement as hereinafter mentioned) cause him to be removed from British India in manner herein after provided, the cost of such removal being paid by ²[the Central Government]

Cost of
removal

or it may cause sections 23 and 30 to be read to him and may then release him

Agreement
with
vagrants

17 Any vagrant or other person of European extraction may enter into an agreement³ in writing with ⁴[the Central Government] binding himself—

- (a) to proceed to such port in British India as shall be mentioned in the agreement,
- (b) there to embark on board such ship and at such time as is directed by an officer appointed in this behalf by ⁵[the Central Government], for the purpose of being removed from India at the expense of ⁶[the Central Government],
- (c) to remain on board such ship until she has arrived at her port of destination, and
- (d) not to return to India until five years have elapsed from the date of such embarkation

¹ Subs by the A O for the L G

² Subs by the A O for Govt

³ For notification requiring that the Commissioner of Police and Justices of the Peace do obtain the sanction of Govt before concluding an agreement with any vagrant see Mid R & O

⁴ Subs by the A O for the Secretary of State for India in Council

⁵ Subs by the A O for the L G of the territories in which such port is situate

⁶ Subs by the A O for the said Secretary of State in Council

(Part IV —Removal from India Part V —Penalties)

Every such agreement ^{1*} * * shall be in the form set forth in ^{Form of} the second schedule to this Act annexed, or as near thereto as circumstances admit ^{agreement.}

18 [Power to perform agreement] Rep by the A O

PART V

PENALTIES

19 Any person refusing or failing to accompany a police officer to, ^{Refusal to} or to appear before, a ²Magistrate of Police or ³[Magistrate of the first class] for the purpose of preliminary inquiry, when required so to do ^{go before} under section 4, may be arrested without warrant and shall be punishable, whether he be or be not a European British subject, on conviction before a Magistrate, with imprisonment for a term which may extend to one month, or with fine, or with both ^{Magistrate}

And any person who when required under section 4 to accompany ^{Assaulting} a police officer to or to appear before, a ²Magistrate of Police or ³[Magistrate of the first class] commits an offence punishable under section 353 of the Indian Penal Code may whether he be or be not a European British subject be tried by a Magistrate for such offence ^{police}

20 Any vagrant who escapes from the police while committed to ^{Escaping} their charge under the orders specified in sections 5 and 6, ^{from}

or who leaves a workhouse, under this Act without permission from ^{police} the Governor ^{Quitting} ^{workhouse} ^{without} ^{leave}

or who, having with such permission left a workhouse for a limited time or a specified purpose, fails to return on the expiration of such time or when such purpose has been accomplished or proves to be impracticable, ^{Failing to} ^{return to} ^{workhouse.}

shall for every such offence be punishable, on conviction before a Magistrate, with rigorous imprisonment for a term which may extend to two years

21. Any person entering into an agreement under section 17, and ^{Failing to} failing to proceed in pursuance thereof to the port therein mentioned, ^{proceed to} ^{port of} ^{embarka-} ^{tion}

or refusing to embark when directed so to do under the same ^{Refusing} section, ^{to go on} ^{board} ^{ship}

¹The words 'may be on unstamped paper and' rep by the Indian Stamp Act, 1879 (1 of 1879), which exempted these agreements from stamp duty, see now, however, the Indian Stamp Act, 1899 (2 of 1899)

²Read now 'Presidency Magistrate,' see s 3 of the Code of Criminal Procedure, 1891 (Act 5 of 1896)

³Subs by s 33 of the Criminal Law Amendment Act, 1923 (12 of 1923) for 'Justice of the Peace'

(Part V—Penalties)

Escaping
from ship

or escaping from the ship in which he has so embarked before she has reached her port of destination,

shall for every such offence be punishable, whether he be or be not a European British subject, on conviction before a Magistrate, with rigorous imprisonment for a term which may extend to six months

Returning
to India

22 Any person returning to India within five years of the date of his embarkation pursuant to any agreement entered into under section 17, unless specially permitted so to do by ¹[the Central Government] shall for every such offence be punishable, whether he be or be not a European British subject, on conviction before a Magistrate, with rigorous imprisonment for a term which may extend to two years

Begging

23 Any person of European extraction found asking for alms when he has sufficient means of subsistence,

or asking for alms in a threatening or insolent manner,

or continuing to ask for alms of any person after he has been required to desist

shall be punishable whether he be or be not a European British subject, on conviction before a Magistrate with rigorous imprisonment for a term not exceeding one month for the first offence, two months for the second, and three months for any subsequent offence

Procedure
on close of
imprison-
ment

24 Every person imprisoned under section 19, 20, 21, 22 or 23 shall, at the end of his term of imprisonment be placed before the nearest ²Magistrate of Police or ³[Magistrate of the first class] who shall if he think fit forthwith deal with him in the manner prescribed by sections 5 and 6

The order of transmission shall certify the fact of the previous conviction

Penalty on
shipmaster
bringing
European
convicts
to India

25. Every master of a ship landing or allowing to land in any part of British India any person of European extraction who has been convicted in any other part of Her Majesty's dominions of felony, or of an offence which, if committed in England, would be felony shall on conviction before a Magistrate be liable for every such person so landed or allowed to land to pay a fine not exceeding five hundred rupees and not less than one hundred rupees and in default of payment to imprisonment for any term not exceeding two months,

unless the defendant satisfy the Magistrate by evidence (which the defendant is hereby declared competent to give) that he had made due inquiry as to the person so landed or allowed to land and that he had no reason to believe that such person had been convicted as aforesaid

¹ Subs. by the A. O. for the Secretary of State for India

² Read now Presidency Magistrate *sec.* 3 of the Code of Criminal Procedure 1893 (Act 5 of 1893)

³ Subs. for Justice of the Peace exercising powers as aforesaid by s. 37 of the Criminal Law Amendment Act 1923 (12 of 1923)

(Part V.—Penalties. Part VI.—Miscellaneous.)

The ¹[Central Government] may from time to time, by notification in the ²[Official Gazette], exempt³ from the operation of the former part of this section the masters of any class of ships, on such terms as to the ¹[Central Government] seem fit, and either in respect of all or of any of the persons on board such ships. Power to exempt certain ship masters

The ¹[Central Government] may in like manner revoke any exemption made under this section

⁴[26. All fines recovered under this Act shall be paid to the credit of the Government of the Province in which the fine was imposed] Payment of fines

⁵[27. All prosecutions under this Act, other than prosecutions under section 22, may be instituted and conducted by such officer as the appropriate Government from time to time appoints in that behalf, and all prosecutions under section 22 may be instituted and conducted by such officer as the Central Government from time to time appoints in that behalf] Prosecutions.

28. In imposing penalties under this Part and Part III of this Act, no person shall exceed the limits of jurisdiction prescribed for him by the Code of Criminal Procedure⁶ in the case of offenders not being European British subjects Limits of jurisdiction

29 No proceeding under this Act shall be deemed invalid by reason only that the ⁷Magistrate of Police or ⁸[Magistrate of the first class] before whom a person, apparently a vagrant, was required to appear, or before whom a person was placed under section 24 was not the nearest. Validity of proceedings where Magistrate is not the nearest.

PART VI

MISCELLANEOUS

30 Any European British subject who, upon the summary inquiry mentioned in section 5, has been determined to be a vagrant, or who Deprivation of privileges of European.

¹ Subs by the A O for "G G in C"

² Subs by the A O for "Gazette of India"

³ For notification issued under the powers conferred by s 25 of Act 21 of 1859, which is kept in force by s 2 of this Act, see Gazette of India, 1870, Pt 1, p 723.

⁴ Subs by the A O for the original s 26 which, as amended by the Repealing and Amending Act, 1914 (10 of 1914), and the Devolution Act, 1920 (38 of 1920), read as follows

"All fines recovered under this Act shall be paid to the credit of the Governor, Lieutenant Governor or Chief Commissioner of the Province concerned or as the Local Government from time to time directs"

⁵ Subs by the A O for the original section which read

"All prosecutions under this Act may be instituted and conducted by such officer as the Local Government from time to time appoints in this behalf"

⁶ See now the Code of Criminal Procedure, 1893 (5 of 1893)

⁷ Read now "Presidency Magistrate," see *ibid.*, s 3 (2)

⁸ Subs by the Criminal Law Amendment Act, 1923 (12 of 1923), s 36, for "Justice"

(Part VI.—Miscellaneous.)

British
subjects
under
Criminal
Procedure
Code

has been convicted under section 22 or section 23, shall, so long as he remains in India, be subject 1* * * * to the provisions of the 2Code of Criminal Procedure 3* * applicable to a European not being a British subject

4* * * * *

Save as aforesaid nothing herein contained shall be deemed to confer jurisdiction over European British subjects on Magistrates who, if this Act had not been passed, would have had no such jurisdiction.

Liability of
importers
of Euro-
peans or
employers
of soldiers
becoming
vagrants

31. Whenever any person of European extraction lands in India, or being a non-commissioned officer or soldier in Her Majesty's Army leaves that Army in India, under an engagement to serve any other person, or any Company, Association or body of persons in any capacity,

and whenever a sailor of European extraction not being a British subject is discharged from his ship in any British Indian port,

and becomes 5* * * * a vagrant within one year after his arrival in India or leaving the Army, or discharge from ship, as the case may be, then the person, or Company, Association or body, to serve whom he has so landed in India or left the Army, or, in the case of a sailor, the person who is at the date of the discharge the owner or agent of the ship from which the sailor has been so discharged, shall be liable to 6[pay to the Central Government the cost of his removal under this Act, and to that and any other Government in British India all other charges incurred by the Government in question] in consequence of his becoming a vagrant

Recovery
of charges

Such costs and charges shall be recoverable by suit as if an express agreement to repay them had been entered into with the 7[Government concerned] by the person, Company, Association, body, owner or agent chargeable

Liability of
consignee
in case of
Europeans
who arrive
in charge of
animals and
become
vagrants

32 When any person of European extraction lands in India, being or having been during his passage to India, or from one Indian port to another, in charge of, or in attendance upon, any animal, and becomes 5* * * * a vagrant within one year after his arrival in India, then

1 The words beyond the limits of the said town" rep by the Criminal Law Amendment Act, 1923 (12 of 1923), s 39

2 See the Code of Criminal Procedure 1898 (5 of 1898)

3 The words "other than those contained in Chapter XXVIII of the same Code" rep by the Criminal Law Amendment Act, 1923 (12 of 1923), s 39

4 Paragraph 2 of s 30 was rep by s 39, *ibid*

5 The words "chargeable to the State as" rep by the A O

6 Subs by the A O for "pay to the Government the cost of his removal under this Act, and all other charges incurred by the State"

7 Subs by the A O for Secretary of State for India in Council'

(Part VI —Miscellaneous)

the consignee of such animal

or the agents in India for the sale of such animal

or, if such consignee or agents cannot be found the agent to whom the ship in which such animal arrived in India was consigned,

shall be liable to pay ¹[to the Central Government the cost of such person's removal under this Act and to that and any other Government in British India all other charges incurred by the Government in question] in consequence of his becoming a vagrant

Any such consignee or agent shall be entitled to charge the consignor or principal for ²[any payment to any Government] under this section

For the purposes of this section consignee includes any person who undertakes to dispose of such animal for the benefit of the consignor, and

Consignee defined

agent includes any person who undertakes the agency of such ship though it may not have been consigned to him

Agent defined

33 In any proceeding under this Part a certified copy of the declaration recorded under section 3 shall be *prima facie* evidence that the European British subject named therein has been upon the summary enquiry mentioned in that section determined to be and that he was at the date of the declaration a vagrant

Evidence of declaration under section 5

34 The powers and duties conferred and imposed by ³[section 16] on ⁴[the Central Government] may be exercised and performed by such class of officers as ⁵[the Central Government] from time to time by notification in the Official Gazette appoints in this behalf

Exercise of powers conferred on Central Government

35 The powers and duties conferred and imposed by this Act on Magistrates ⁶* * * * and police officers respectively may in places beyond the limits of British India be exercised and performed by such persons respectively as the ⁷[Central Government] from time to time by notification in the ⁸[Official Gazette] appoints in this behalf

Exercise in Indian States of powers conferred on Magistrates and Police

¹ S 13 by the A O for to the Government the cost of such person's removal under this Act and all other charges incurred by the State

² S 6 by the A O for any payment to the Govt

³ S 13 by the A O for sections 16 and 18

⁴ S 14 by the A O for a I G

⁵ S 15 by the A O for a I G

⁶ The words "States of the Empire" exercising the powers of a magistrate of the first class rep by the Criminal Law Amendment Act 1923 (12 of 1923) s 42

⁷ Subs 1 by the A O for G G in C

⁸ S 15 by the A O for Gazette of India

(Part VI.—Miscellaneous The First Schedule)

1[Provided that in the case of any such place which is within the political charge of a 2[Provincial Government], the power conferred on the 3[Central Government] by this section 4[may, subject to the provisions of section 124 of the Government of India Act, 1935, be exercised] by that 2[Provincial Government] by notification in the 5[Official Gazette].]

36 6[The Central Government and any Provincial Government, as respects matters with which they are respectively concerned], 7* * * may from time to time make rules, consistent with this Act, for the guidance of officers in matters connected with its enforcement

All such rules shall be published in the 5[Official Gazette] and shall thereupon have the force of law

THE FIRST SCHEDULE

(See section 9)

Whereas E F of , a person of European extraction and holder of this certificate, has appeared before me and satisfied me that he is not likely to become a vagrant within the meaning of the European Vagrancy Act, 1874, THESE ARE TO CERTIFY that for the space of months from the date hereof and within the Province [or District] of nothing in sections 4, 5, 6 and 7 of the same Act shall be deemed to apply to him, unless he is found asking for alms, IN WHICH CASE this certificate shall be void

(Signed) G H ,

Magistrate of Police⁸ for the town of
or ⁹[Magistrate of the first class]

Dated this day
of 18

¹ Ins by the Devolution Act 1920 (38 of 1920), s 2 and Sch I

² Subs by the A O for 'L G

³ Subs by the A O for 'G G in C'

⁴ Subs by the A O for 'shall be exercised'

⁵ Subs by the A O for 'local official Gazette'

⁶ Subs by the A O for 'The L G'

⁷ The words 'subject to the control of the G G in C' rep by the Devolution Act 1920 (38 of 1920), s. 2 and Sch I

⁸ Read now 'Presidency Magistrate,' s 3 of the Code of Criminal Procedure, 1898 (Act 5 of 1898)

⁹ Subs for 'Justice of the Peace for exercising the powers of a Magistrate of the class' by s 41 of the Criminal Law Amendment Act, 1923 (12 of 1923)

(The Second Schedule)

THE SECOND SCHEDULE

(See section 17)

ARTICLES OF AGREEMENT made this day of 18
BETWEEN ¹[the Governor General in Council (or after the establishment of the Federation the Governor General of India)] of the one part and C D of etc [*the vagrant*] of the other part Each of the parties hereto (so far as relates to the acts on his own part to be performed) hereby agrees with the other of them as follows —

1 The said C D shall proceed forthwith to the port of [*the port of embarkation*]

2 The said C D shall there embark on board such ship and at such time as an officer appointed in this behalf by ²[the Governor General in Council (or after the establishment of the Federation the Governor General of India)] shall direct

3 The said C D shall remain on board such ship until she shall have arrived at her port of destination

4 The said C D shall not return to India until five years shall have elapsed from the date of such embarkation unless specially permitted so to return by ³[the Governor General in Council (or after the establishment of the Federation the Governor General of India)]

5 ⁴[The Governor General in Council (or after the establishment of the Federation the Governor General of India)] shall defray the cost of the transit of the said C D to the said port and his lodging and subsistence during such transit and during his detention (if any) at the same port and shall contract with the owner of the said ship or his agent for the passage of the said C D on board the said ship and for his subsistence during the voyage for which he shall embark as aforesaid

5

¹ Subs by the A O for the Secretary of State for India in Council

² Subs by the A O for the I G

³ Subs by the A O for the said Secretary of State

⁴ Subs by the A O for the said Secretary of State in Council

⁵ The second paragraph of Article 5 rep by the A O

THE LAWS LOCAL EXTENT ACT, 1874

CONTENTS

PREAMBLE

SECTIONS

- 1 Short title
- 2 Interpretation clause
- 3 Local extent of Acts in first schedule
- 4 Local extent of enactments in second schedule
- 5 Local extent of enactments in third schedule
- 6 Local extent of enactments in fourth schedule
- 7 Local extent of enactments in fifth schedule
- 8 Savings
- 9 [*Repealed*]

SCHEDULES

FIRST SCHEDULE

ENACTMENTS IN FORCE THROUGHOUT THE WHOLE OF BRITISH INDIA,
EXCEPT THE SCHEDULED DISTRICTS

SECOND SCHEDULE

ENACTMENTS IN FORCE THROUGHOUT THE WHOLE OF THE TERRITORIES
SUBJECT TO THE GOVERNMENT OF THE GOVERNOR OF PORT ST
GEORGE IN COUNCIL EXCEPT THE SCHEDULED DISTRICTS

THIRD SCHEDULE

ENACTMENTS IN FORCE THROUGHOUT THE WHOLE OF THE TERRITORIES
SUBJECT TO THE GOVERNMENT OF THE GOVERNOR OF BOMBAY IN
COUNCIL EXCEPT THE SCHEDULED DISTRICTS

FOURTH SCHEDULE

ENACTMENTS IN FORCE THROUGHOUT THE WHOLE OF THE TERRITORIES
SUBJECT TO THE GOVERNMENT OF THE LIEUTENANT GOVERNOR OF
BENGALEE EXCEPT THE SCHEDULED DISTRICTS

FIFTH SCHEDULE

ENACTMENTS IN FORCE THROUGHOUT THE WHOLE OF THE TERRITORIES
SUBJECT TO THE GOVERNMENT OF THE LIEUTENANT GOVERNOR OF
THE NORTH WESTERN PROVINCES EXCEPT THE SCHEDULED
DISTRICTS

SIXTH SCHEDULE

- PART I — SCHEDULED DISTRICTS MADRAS
 II — SCHEDULED DISTRICTS BOMBAY
 III — SCHEDULED DISTRICTS BENGAL
 IV — SCHEDULED DISTRICTS NORTH WESTERN PROVINCES
 V — SCHEDULED DISTRICTS PUNJAB

- PART VI—SCHEDULED DISTRICTS, CENTRAL PROVINCES
 „ VII—THE CHIEF COMMISSIONERSHIP OF COORG
 „ VIII—THE CHIEF COMMISSIONERSHIP OF THE ANDAMAN AND
 NICOBAR ISLANDS
 „ IX—THE CHIEF COMMISSIONERSHIP OF AJMER AND MERWARA
 „ X—THE CHIEF COMMISSIONERSHIP OF ASSAM
 „ XI—[*Repealed*]
 „ XII—[*Repealed*]
 „ XIII—[*Repealed*]

SEVENTH SCHEDULE

[*Repealed*]ACT No XV or 1874¹

[8th December 1874]

An Act for declaring the local extent of certain Enactments,
and for other purposes

WHEREAS it is expedient to declare the local extent of certain Acts Preamble
 passed by the Governor General of India in Council the Legislative
 Council of India and the Council of the Governor General of India as
 assembled for the purpose of making Laws and Regulations

And whereas it is also expedient to consolidate the laws relating to
 the local extent of certain Acts and Regulations in the Presidencies of
 Fort St George and Bombay and in the Lower and the North Western
 Provinces of the Presidency of Fort William in Bengal

It is hereby declared and enacted as follows —

1 This Act may be called the Laws Local Extent Act 1874

2 In this Act the expression Scheduled Districts means the Short title
Interpreta
tion clause
 territories mentioned in the sixth schedule hereto annexed

3 The Acts mentioned in the first schedule hereto annexed are now Local
extent of
Acts in
first
schedule
 in force throughout the whole of British India except the Scheduled
 Districts

4 The enactments mentioned in the second schedule hereto annexed Local
extent of
enactments
in second
schedule
 are now in force throughout the whole of the territories now subject to
 the government of the Governor of Fort St George in Council, except
 the Scheduled Districts subject to such government

5 The enactments mentioned in the third schedule hereto annexed Local
extent of
enactment
in third
schedule
 are now in force throughout the whole of the territories now subject to
 the government of the Governor of Bombay in Council, except the
 Scheduled Districts subject to such government

¹ For the Statement of Objects and Reasons see Gazette of India 1870 Pt V p
 153 and for Proceedings in Council see *ibid* 1871 Supplement pp 1074 and 1218
 and 1874 Supplement pp 1885 and 1976

Local
extent of
enactments
in fourth
schedule

6 The enactments mentioned in the fourth schedule hereto annexed are now in force throughout the whole of the territories now subject to the government of the Lieutenant Governor of Bengal, except the *Scheduled Districts* subject to such government

Local
extent of
enactments
in fifth
schedule

7 The enactments mentioned in the fifth schedule hereto annexed are now in force throughout the whole of the territories now subject to the government of the Lieutenant Governor of the North Western Provinces of the Presidency of Fort William, except the *Scheduled Districts* subject to such government

Savings

8 Nothing herein contained shall—

(a) bar the power of the ¹[Central Government] or the ²[Provincial Government], under any law for the time being in force, to extend to any place any Act mentioned in the said first schedule,

(b) extend any Act empowering the ²[Provincial Government] to extend the same or any part thereof or affect in any manner the exercise of such power

(c) affect the operation of any Act or Regulation heretofore extended to or declared to be in force in any of the *Scheduled Districts*

(d) revive any enactment which has been repealed either generally or with reference to some special subject

3*	*	*	*	*	*	*
*	*	*	*	*	*	*

(j) extend to any of the Towns of Calcutta, Madras and Bombay any law not now in force therein

⁴[(j)] extend to Pargana Bhadohi or Pargana Kera Mangror in the Mirzapur District, or to Pargana Kaswa Raja in the Benares District any law not now in force therein],

(k) affect the operation of any enactment not mentioned in any of the schedules hereto annexed

9 [Enactments repealed] Rep by the Repealing Act 1876 (XII of 1876)

¹ Subs by the A O for G G in C

² Subs by the A O for T G

³ Cls (e) and (h) were rep by Act 8 of 1887 cl (f) by the Amending Act 1891 (12 of 1891) cl (g) by the Guardians and Wards Act 1890 (8 of 1890) and cl (i) by the Repealing and Amending Act 1894 (4 of 1894)

⁴ Ins by the Benares Family Domains Act 1881 (14 of 1881) s 15

FIRST SCHEDULE ¹

(See section 3)

ACTS OF THE SUPREME COUNCIL

Year and Number	Subject
1837 IV	Power to acquire land
1838 XXV	Wills executed before the 1st January 1866
1839 XXIX	Dower when marriage was contracted before 1st January 1866
" XXX	Inheritance where descent took place before 1st January 1866
XXVII	Interest
1841, X	Registration of ships
1843 V	Slavery
1850 V	Coasting Trade
, XI	Navigation Laws

¹ Act 15 of 1874 having been rep so far as it relates to the following enactments by the Acts noted against each the references to those enactments have been omitted from this schedule —

Enactments omitted	Repealing Acts
Act 26 of 1836	Act 12 of 1927
, 6 of 1840	, 26 of 1881
, 11 of 1841	, 8 of 1887
, 18 of 1841	, 11 of 1878
, 19 of 1841	, 12 of 1927
, 9 of 1842	, 12 of 1891
, 12 of 1842	, 8 of 1887
, 20 of 1847	, 12 of 1927
, 34 of 1850	The A O
, 30 of 1852	Act 12 of 1927
, 33 of 1852	, 8 of 1887
, 18 of 1854	, 12 of 1891
, 3 of 1858	The A O
, 1 of 1859	Act 21 of 1923
, 3 of 1859	, 8 of 1887
, 8 of 1859	} , 12 of 1891
, 14 of 1859 s 15	
, 15 of 1859	
, 27 of 1860	, 7 of 1889
, 9 of 1861	, 8 of 1890
, 23 of 1861	} , 12 of 1891
, 6 of 1863	
, 6 of 1864	, 12 of 1927
, 11 of 1865	, 9 of 1887
, 21 of 1865	} , 12 of 1927
, 5 of 1866	
, 10 of 1866	, 12 of 1891
, 10 of 1867	, 9 of 1887
, 10 of 1868	, 12 of 1891
, 15 of 1869	} , 12 of 1927
, 1 of 1870	

Year and Number	Subject
1 1850, XII	Default of Public Accountants
, XVIII	<i>Protection of Judicial Officers</i>
, XIX	Binding of Apprentices
,, XXI	Non forfeiture of rights by loss of Caste
,, XXVII	Inquiries into the behaviour of Public Servants
1853, II	Burdens on land
1854, XXXI	Barring entails Conveyances by married women
1855 VI	<i>Mesne profits and improvements</i>
, VII	Executors and Administrators
,, XIII	Compensation for loss occasioned by death caused by actionable wrong
, XXIII	Administration of mortgaged estates in cases of descents occurring or devised made before the 1st January 1866
,, XXIV	Penal servitude
, XXVIII	Interest
1856 IX	Bills of Lading
, XI	Desertion by European Soldiers
, XV	Marriage of Hindu Widows
2 1857 XI	<i>Offences against the State</i>
2 , XXV	<i>Forfeiture by Mutineers</i>
3 ,, XXVI	<i>Estates of Lunatics not subject to jurisdiction of Supreme Courts</i>
3 , XXXVI	<i>Lunatic Asylums</i>
1859, IX	Sections 16 17, 18 and 20—Forfeitures
1860 XXI	Registration of Societies
1862 III	Government Seal
1863, XVI	Excise Duty payable on Spirits used in Arts and Manufactures
, XXIII	Claims to waste lands
, XXVI	Gazette of India
1864 III	Foreigners
1865, III	Common Carriers
, XV	Marriage and Divorce among Parsees

¹ Act 12 of 1850 is rep locally in Assam by the Assam Land Revenue Regulation, 1899 (1 of 1896) Assam Code

² These Acts were rep by s 3 and Sch of the Special Laws Repeal Act, 1922 (4 of 1922)

³ These Acts were rep by the Indian Lunacy Act 1912 (4 of 1912)

Year and Number	Subject
1866 XXI	Dissolution of Marriages of Native Converts
, XXVIII	Trustees and Mortgagees Powers
1867, XXX	Printing Presses etc

SECOND SCHEDULE ¹

(See section 4)

(a) —MADRAS REGULATIONS

Year and Number	Subject
1802, III (s 1 part of s 16 only)	Procedure of Civil Courts
XIX (s 2)	Covenanted Civil Servants forbidden to lend
XXV	Settlement of Land revenue
XXVI (ss 1 2 and 3 only)	Registration of malguzari land
XXIX	Karnams
1803 I	Board of Revenue
„ II	Conduct of Collectors, etc

¹ Act 15 of 1874 having been rep. so far as it relates to the following enactments, by the Acts noted against each the references to those enactments have been omitted from the schedule —

Enactments omitted		Repealing Acts	
Mad	Reg 3 of 1802 s 11	Act	12 of 1891
	5 of 1802 s 30	, 11 of 1901	
	13 of 1802	Do	
	1 of 1804	}	, 12 of 1891
	2 of 1807		
	4 of 1816		
	9 of 1816 s 13	}	, 12 of 1891
	14 of 1816		
	5 of 1816		
	1 of 1819	}	, 12 of 1897
	2 of 1819		
	4 of 1821, s 4		
	3 of 1831	}	Act 1 ^o of 1878
	7 of 1832		
	11 of 1832		
	14 of 1832		, 6 of 1878
			13 of 1899

¹ Mad Cole² This Regulation has been rep. locally by Madras Act 2 of 1894

Year and Number	Subject
¹ 1804, V	Court of Wards
1806, II ^a (s 7, cl second))	Collectors and Karnams
² 1808, VII	Marthal Law
1816, XI	Sections 8, 9, 10—Heads of villages Section 11, cl 1—Stolen property Section 13—Discovery of corpses Section 14—Register of persons confined by heads of villages, and Section 47—Magistrates charged with maintenance of peace
⁴ „ XII	Reference of claims regarding land and produce to Village and District Panchayats
1817, VII	Maintenance of Bridges etc, Escheats
„ VIII (s 9 only)	Sale for arrears of revenue of estate belonging to Native Officer or Soldier
1822, IV	Explanation of Madras Regulation XXV, 1802
„ VII (cl 1 of s 3 only)	Native Officers in Revenue and other Public Departments
„ IX	Embezzlement by public servants and malversation in revenue matters
1823, III	
1828, VII	Powers of Subordinate and Assistant Collectors
1829, V	Hindu Wills and Estates
1830, I	Prohibition of Widow burning
1831, V (s 7, cl 2 only)	Liability of Ministerial Officers for reception of improperly stamped document
⁴ „ VI	Hereditary Village Offices
⁴ „ X	Prohibition of Sale of Estates of Minors for Arrears of Revenue
1832, III	Limitation for Suits against orders of Revenue Authorities under Madras Regulation VII of 1823

¹ Act 15 of 1874 so far as it relates to the portions of Madras Regulation 5 of 1804 which were rep by the Guardians and Wards Act 1890 (8 of 1890) is rep by the latter Act. The Regulation was rep by the Madras Court of Wards Act, 1902. (Mad 1 of 1902)

g. schedule Of the entire
III of the Schedule to the

- **Adidas Survey and Bound**
 ased of claims to lands or
 mination of an uncertain

and disputed boundary or land mark

Mad 3 of 1895)
10 of 1831, s 3 is rep
the Regulation as is

(b) — ACTS OF THE SUPREME COUNCIL RELATING TO THE MADRAS
PRESIDENCY ¹

Year and Number	Subject
1837, XXXVI	Criminal Jurisdiction of Collectors
* { 1839, VII	Tahsildárs
1840, VIII	Awards of Pancháyats
* 1846, I	Pleaders
* 1849, X	Commissioners of Revenue.
* 1853, XX	Pleaders
{ 1857, VII	Uncovenanted Agency
* { 1858, I	Compulsory Labour
1859, XXIV	Police

¹ Act 15 of 1874 having been rep so far as it relates to the following enactments, by the Acts noted against each, the references to those enactments have been omitted from this schedule —

Enactments omitted	Repealing Acts
Act 12 of 1838	Act 6 of 1878
„ 17 of 1840	„ 12 of 1891
„ 7 of 1852	
„ 6 of 1844	
„ 9 of 1816	„ 3 of 1937
„ 10 of 1855 & 10	„ 12 of 1927
„ 14 of 1855	„ 11 of 1901
„ 21 of 1855	„ 8 of 1887
„ 8 of 1856	„ 12 of 1927
„ 14 of 1858	„ 8 of 1890
„ 28 of 1860	„ 12 of 1927
„ 11 of 1869	„ 12 of 1891.
„ 24 of 1869	„ 18 of 1877.

* Rep by the Madras Court of Wards Act 1902 (Mad 1 of 1902).

* As to the repeal of Acts 1 of 1846 and 20 of 1853 in the Madras Presidency, see ss 1 and 42 of the Legal Practitioners Act 1879 (18 of 1879)

THIRD SCHEDULE ¹

(See section 5)

(d) —BOMBAY REGULATIONS

Year and Number		Subject
1827	II	Section 21 (caste questions) * * *
"	IV	Section 26 ¹ (law applicable to suits) section 69, ² clauses <i>second</i> and <i>third</i> ³ (attachment and distraint of crops)
"	V	Preamble section 9 (acknowledgments of debt) section 14 (interest) section 15 (mortgages and pledges)
"	VIII	Administration of Estates
"	XII	Section 19 (Magistrate's power to make rules) section 20 (standards of weights and measures) section 27, clause 2 (supervision of suspected persons) section 37, clauses <i>first</i> and <i>second</i> (responsibility of villages for robberies)
"	XIII	Section 34, clause <i>third</i> (letter substituted for summons)
"	XXII	Sections 40 41, 42 43 (passage of troops)
1830	V	Section 1 (Revenue Commissioners) section 2 clauses 1 2, 3 (Collectors and Sub Collectors)
"	XIII	Civil jurisdiction of Jagirdars
1831,	V	Village Patels
1832	II	Realization of Revenue
1833,	V	Hereditary Officers

¹Act 15 of 1874 having been rep so far as it relates to the following enactments by the Acts noted against each the references to those enactments have been omitted from the schedule —

Enactments omitted	Repealing Acts
Bom Reg 12 of 1827, preamble	} Act 12 of 1891
" " 16 of 1827	
" " 21 of 1827, s 1 16, 46 54 73	
" " 22 of 1827 ss 18 20 45 47	
" " 25 of 1827	13 of 1889 The A O

²Certain words rep by the Repealing Act, 1927 (12 of 1927), s 2 and Sch

³Bom Code

⁴Bom Reg 4 of 1827, s 69 and Bom Regs 5 of 1830 17 of 1831, 2 of 1832 and 5 of 1833 are rep locally by the Bombay Land revenue Code 1879 (Bom 5 of 1879), Bom Code

(b) —ACTS OF THE SUPREME COUNCIL RELATING TO THE BOMBAY PRESIDENCY ¹

Year and Number		Subject
1838	XVI	Jud c ary
"	XVIII	Suret es
1838	XIX	Coasting Vessels
1839	XX	Revenue
1840	XX	Agents of Fore gn-Sovere gns
*184 ^o	XIII	Reven e
"	XVII	Revenue Comm ss oners
1844	XIX	Abol t on of Town Dut es
*1846	I	Planders
"	III	Sect ons 1 5 and 6—Boundary Marks
*1853	XX	Planders

¹ Act 15 of 1874 hav ng been rep so far as it relates to the following enactments by the Acts noted against each the references to the enactments ha e been om tted from the schedule —

Enactments om tted	Repeal ng Acts
Act 11 of 1843	} Act 1 ^o of 1891
3 of 185 ^o	
*1 of 18 ^o	
10 of 18 5 s 10	11 of 1901
8 of 1856	9 of 1894
*0 of 1864	8 of 1890

* Acts 18 of 1838 13 and 17 of 184^o and 1^o of 1846 are rep locally by the Bombay Land revenue Code 1879 (Bom 5 of 18 9) Bom Cde

* As to the repeal of Acts 1 of 1846 and 1^o of 18 3 the Bombay Pres dency see ss 1 and 4^o of the Legal Pract t oners Act 18 9 (18 of 18 9)

FOURTH SCHEDULE ¹

(See section 6)

(a) —BENGAL REGULATIONS (LOWER PROVINCES)

Year and Number	Subject
1793, I	Perpetual Settlement
„ II	Collection of land revenue
„ VIII	Rules for Decennial Settlement
„ XI	Native laws of inheritance to Revenue paying land
„ XIX	Title to lands exempt from Revenue
„ XXXVII	Title to lands exempt from Revenue under bādshāhi grants
„ XXXVIII	Section 1—Preamble Section 2—Prohibition of loans by Covenanted Servants
1794, III	Sections 13, 16, 17, 18 19 and 20—Arrears of Revenue
1799, V	Wills and Intestacies of Natives
1800, VIII	Pargana Register of Lands
1801, I	Arrears of Revenue Division of Joint Estates
*1804, X	<i>Punishment by Courts martial of certain State offences</i>
1806, XI	Passage of Troops
1810, XIX	Maintenance of Bridges, etc., Escheats

¹Act 15 of 1874 having been rep so far as it relates to the following enactments, by the Acts noted against each, the references to those enactments have been omitted from this schedule —

Enactments omitted	Repealing Acts
Ben Reg 48 of 1793	} Act 12 of 1891
„ „ 3 of 1794, s 12	} „ 12 of 1876
„ „ 58 of 1795 ss 3 & 4	} „ 12 of 1891
„ „ 15 of 1797	} „ 13 of 1889
„ „ 1 of 1798	} „ 12 of 1891
„ „ 17 of 1806, ss 7 & 8	} „ 6 of 1878
„ „ 20 of 1810	} „ 12 of 1891
„ „ 11 of 1811	} „ 12 of 1891
„ „ 19 of 1814	} „ 6 of 1878
„ „ 5 of 1817	} „ 12 of 1891
„ „ 20 of 1817, ss 28 & 32	} The A O
„ „ 3 of 1818	Act 12 of 1891
„ „ 6 of 1819	„ 10 of 1892
„ „ 20 of 1825	„ 12 of 1876
„ „ 4 of 1829	

⁴ Ben Code⁵ Rep by s 3 and Sch of the Special Laws Repeal Act, 1922 (4 of 1922)

Year and Number		Subject
1812,	V	Collection of Land revenue
"	XI	Removal of Foreign Emigrants
1817,	X	Section 29—Criminal process in Salt and Opium Departments Section 30 clauses 1 2 and 5—Building forts Collecting sepoy and stores, Encroaching on roads
1819,	II	Resumption of Revenue free lands
1821,	IV	Powers of Collectors and Magistrates
1822,	III	<i>Boards of Land-revenue</i>
"	XI	Section 36—Khás management of purchases by Government Section 38—non liability of Government for errors of Courts
1823,	VI	Indigo Contracts
	VII	Prohibition of loans to Covenanted Civil Servants
1825	VI	Passage of Troops
"	IX	Defaulting Malguzars
"	XI	Alluvion and diluvion
"	XIII	Settlement of resumed Lákhurá land
"	XIV	Authority to confirm Lákhurá tenures Native grants
1827,	III	Section 5—Evidence
"	V	Management of Estates under attachment
1828	III	Appeals from decisions of Revenue Authorities
"	IV	Section 1 and section 2 clause 4—Time during which Collectors are to be considered engaged in making settlements
1829,	I	Commissioners of Revenue and Board of Revenue
"	XVII	Widow burning
1830	V	Sections 1 and 5—Indigo Contracts

¹ Rep by the Ben Board of Revenue Act 1913 (Ben 2 of 1913) Ben Code² Ben Code

(b) — ACTS OF THE SUPREME COUNCIL RELATING TO THE LOWER PROVINCES ¹

Year and Number		Subject
1836	\	Indigo Contracts
	XXI	Creating Zilas
1841	\II	Section 2—No Interest on arrears of Land revenue
1847	IX	Assessment of new lands
1848	\	Land revenue
*1850	XLIV	Board of Revenue
*1855	XXII	Embankments
1856	XII	Civil Court Amins -
1857	XIII	Opium
1858	XXVI	Settlement of Alluvion
1859	XI	Sales for Arrears of Revenue

¹ Act 15 of 1874 having been rep so far as it relates to the following enactments by the Acts noted against each the references to those enactments have been omitted from this schedule —

Enactments omitted		Repealing Acts
Act 20 of 1836	}	Act 12 of 1891
11 of 1838		
19 of 1853 s 26		1 of 1903
, 20 of 1856	}	, 12 of 1891,
21 of 1856		
40 of 1858		8 of 1890
23 of 1860		12 of 1891

* Rep by the Ben Board of Revenue Act 1913 (Ben 2 of 1913) Ben Code

* Act 3^o of 1875 has been rep locally in Bengal by the Bengal Embankments Act 1873 (Ben 6 of 1873)

FIFTH SCHEDULE

(See section 7)

(a) —BENGAL REGULATIONS (NORTH WESTERN PROVINCES) ¹

Year and Number	Subject
1793, XXXVIII	Section 1—Preamble Section 2—prohibition of loans by Covenanted Servants
1799, V	Wills and Administration to Natives
² 1801, X	<i>Punishment by Courts martial of certain State Offences</i>
1806, XI	Passage of Troops
1812, XI	Removal of Foreign Emigrants
1822, XI	Section 38—Non liability of Government for errors of Courts
1823, VI	Indigo Contracts
" VII	Prohibition of loans to Covenanted Civil Servants
1825, VI	Passage of Troops
" XI	Alluvion and Dereliction
1827, III	Section 5—Evidence
" V	Management of Estates under Attachment
1829, XVII	Widow burning
1830, V	Sections 1 and 5—Indigo Contracts
1831, XI	Sections 1 2 5, 6—Police powers of Tahsildars
1833, IX	Deputy Collectors

¹ Act 15 of 1874 having been rep so far as it relates to the following enactments, by the Acts noted against each, the references to those enactments have been omitted from this schedule —

Enactments omitted	Repealing Acts
Ben Reg 1 of 1798	} Act 12 of 1891
" " 17 of 1806 ss 7 & 8	
" " 19 of 1810	} " 13 of 1889
" " 21 of 1810	
" " 5 of 1817	} 12 of 1891
" " 3 of 1818	
" " 6 of 1819	} The A O
" " 20 of 1825	
" " 6 of 1831 s 6	} Act 12 of 1891
" " 11 of 1831, ss 4 & 8	
" " 1 of 1833	} " 12 of 1891
	} " 8 of 1875

² U P Code³ Rep by s 3 and Sch of the Special Laws Repeal Act, 1922 (4 of 1922)

(b) — ACTS OF THE SUPREME COUNCIL RELATING TO THE NORTH-WESTERN PROVINCES ¹

Year and Number	Subject
1836, X	Indigo Contracts
1854, XVI	Police
1856 XII	Civil Court Amins
" „ XX	Chaukidars
1857, XIII	Opium

SIXTH SCHEDULE

(See sections 2 3, 4, 5 6 and 7)

PART I

SCHEDULED DISTRICTS, MADRAS

I — In Ganjam

- (1) The Gumsur Mahahs, including Chokapad
- (2) The Surada Mahahs
- (3) The Chinna Kimedı Mahahs
- (4) The Pedda Kimedı Mahahs
- (5) The Bodaguda Mahahs
- (6) The Surangi Mahahs
- (7) The Farla Kimedı Mahahs
- (8) The Muttās of Korada and Ronaba (otherwise called Srikarma)

3*

¹ Act 15 of 1874 having been rep so far as it relates to the following enactments by the Acts noted against each the references to those enactments have been omitted from this schedule —

Enactments omitted
 Act 21 of 1830
 „ 19 of 1853 s 26
 „ 40 of 1858

Repealing Acts

} Act 1 of 1903
 8 of 1890

² Act 20 of 1856 has been rep in the U P by the U P Town Areas Act 1914 (U P 2 of 1914) s 41

³ Item (9) The Chighatti Malah was rep by the Amending Act 1891 (12 of 1891)

- (10) The Juradā Mahah
- (11) The Jalastra Mahah
- (12) The Mandasa Mahah
- (13) The Budarashinghi Mahah
- (14) The Kuttingia Mahah

II —In Vizagapatam

- (1) The Jeypur Zamindari
- (2) Golconda Hills west of the River Boderu
- (3) The Madugol Mahahs
- (4) The Kasipur Zamindari
- (5) The Panchipenta Mahahs
- (6) Mondernkolla in the Merangi Zamindari
- ¹[(7) The Konda Muttā of Merangi]
- (8) The Gumma and Konda Muttās of Kurpam
- (9) The Kottam, Rām and Konda Muttās of Pālkonda

III —In the Godāvāri District ²

- (1) The Bhadrāchalam Taluq
- (2) The Rakapili Taluq
- (3) The Rampā Country

IV —In the Indian Ocean

The Laccadive Islands, including Minicoy

PART II

SCHEDULED DISTRICTS, BOMBAY

I —The Province of Sindh

3* * * * * * *

¹ Subs by the Amending Act 1891 (12 of 1891) for (7) The Konda Muttā of Belgām'

² The Ducharti and Guditera Muttās in the Golconda Hills have been transferred from the Vizagapatam to the Godāvāri District. See Fort St George Gazette 1881, Pt I p 336

Certain villages and estates in the Godāvāri District became Scheduled Districts for the purposes of the Scheduled Districts Act, 1874 (14 of 1874), but they are not scheduled districts within the meaning of the Laws Local Extent Act, 1874

³ Item II, The Panch Mahals, was rep by the Panch Mahals Laws Act, 1885 (7 of 1885), with effect from 1st May 1895

III.—Aden.¹

IV.—The villages belonging to the following Mehwasī Chiefs:—

- (1) The Párvī of Kāthī,
- (2) The Párvī of Nál
- (3) The Párvī of Singpūr
- (4) Walwī of Gaohállī
- (5) The Wassáwa of Chikhhlī.
- (6) The Párvī of Nawalpūr

PART III

SCHEDULED DISTRICTS, BENGAL

I.—The Jalpaiguri and Darjeeling ²[Districts]

II.—The Hill Tracts of Chittagong

III.—The Santhál Parganas

IV.—The Chutiá Nágpur Division ³

V.—The Maháls of Angul and Bankī.⁴

¹ Aden ceased to be part of British India from 1st April 1937

² Subs. by the Amending Act, 1891 (12 of 1891) for "Divisions".

³ The Thanas of Raipur and Khattra, which formerly formed portion of the Chutiá Nágpur Division, were transferred to the District of Bankura, and ceased to be a Scheduled District on the 1st October 1879. See the Raipur and Khattra Laws Act, 1879 (19 of 1879).

The Estate of PORAHAT now forms part of the Chutia Nágpur Division Scheduled District for the purposes of the Scheduled Districts Act, 1874, see the Porahat Estate Act, 1893 (2 of 1893), s. 3, but it is not a "scheduled district" within the meaning of the Laws Local Extent Act 1874.

⁴ The Mahál of Bankī ceased to be a Scheduled District on the 1st April, 1882, see the Bankī Laws Act, 1881 (25 of 1881).

The KHONDALS in Orissa, which previously formed part of the Angul District [see the Angul Laws Regulation, 1913 (3 of 1913)] and now form an independent District [see the Khondmals Laws Regulation 1936 (4 of 1936)] became a Scheduled District for the purposes of the Scheduled Districts Act 1874 (14 of 1874), but they are not "scheduled districts" within the meaning of the Laws Local Extent Act, 1874.

PART IV

SCHEDULED DISTRICTS, NORTH-WESTERN PROVINCES.

1* * * * * * *

II —The Province of Kumion and Garhwál

III —The Tarn Parganas, comprising—Bázipur, Kashípúr, Jaspúr,
Rudápur, Gádarpu, Kilpuu, Nínak-Matthí and Bilberí

IV — In the Mirzápur District—

(1) The tappis of Agori Khás and South Kon in the Pargana of Agori

(2) The tappí of British Singrauli in the Pargana of Singrauli.

(3) The tapps of Phulwá, Dudhí and Burhá in the Pargana of Bichipír

(4) The portion lying to the South of the Kaimor Range

2* * * * * * *

VI —The tract of country known as Jaunsar Bawar in the Dehrá Dúu District

PART V

SCHEDULED DISTRICTS, PUNJAB

The Districts of ³Hazíra, Pesháwar, Kohát, Bannu, Dera Ismail Khan, Dera Ghází Khán, Lahaul and Spiti

¹ Item I, The Jhansi Division comprising the Districts of Jhansi, Jalaun and Lalitpur, was rep. by the North Western Provinces and Oudh Act, 1890 (20 of 1890), s. 8 (I)

² Item V, The Family Domains of the Maharaja of Benares comprising the following parganas —Bhádohi and Kheerá Mangror in the Mirzápur District, Kaswa Raja in the Benares District, was rep. by the Benares Family Domains Act, 1881 (14 of 1881), s. 14

³ Portions of the districts of Hazara, Bannu and Dera Ismail Khán and the districts of Peshawar and Kohát now form the N. W. F. P., see Gazette of India, 1901, Pt. I, p. 857

PART VI

SCHEDULED DISTRICTS, CENTRAL PROVINCES

Chattisgarh Zamindaris

1 Khariár	13 Mátun
2 Bindrá Navagarh	14 Uprorá
3 Sahezipur	15 Kendá
4 Gándai	16 Láphá
5 Silhetí	17 Chhúrí
6 Barbaspu	18 Korbá
7 Thákurtola	19 Chapá
8 Lohará	20 Borá Sámbar
9 Gondardehí	21 Phúljar
10 Fingesar	22 Kolábará
11 Pándará	23 Rámpur
12 Pendrá	

Chanda Zamindaris

1 Ahírf	11 Muramgáon
2 Ambagarh Chauki	12 Pánabáras
3 Aundhí	13 Palasgarh
4 Dhanorá	14 Rángí
5 Dudhmálá	15 Sirsundi
6 Gewardá	16 Sonsari
7 Jhárápáprá	17 Chándálá
8 Khutgáon	18 Gilgáon
9 Koráchá	19 Páwí Mutánda
10 Kotgal	20 Pategáon

Chhindwád Jágirdaris

1 Haraf	7 Pachmarhi
2 Chháter	8 Partábgarh
3 Gorakghát	9 Almod
4 Gorpáni	10 Sonpur
5 Bakhtagarh	11 Bariám Pagará
6 Bardágarh	

PART VII

The Chief Commissionership of Coorg

¹ The taluqs of Nugur Albaka and Cherla which were transferred to the Madras Presidency with effect from 1st July 1909 had from the 17th January 1905 become scheduled districts within the meaning of the Scheduled Districts Act 1874 (14 of 1874)

PART VIII.

The Chief Commissionership of the Andaman and Nicobar Islands.

PART IX

The Chief Commissionership of Ajmer and Merwára

PART X

¹The Chief Commissionership of Assam

[PART XI—*The Hill Tracts of Arakan*] Rep by the A O

[PART XII.—*The Pargana of Manpur.*] Rep by the Repealing Act, 1938 (I of 1938), s. 2 and Sch.

[PART XIII—*The Cantonment of Morar.*] Rep. by the Amending Act, 1891 (XII of 1891).

SEVENTH SCHEDULE.—[*Enactments Repealed*] Rep. by the Repealing Act, 1876 (XII of 1876).

¹The Lusháí Hills which include the North and South Lusháí Hills and the Mokokchung Sub-division of the Nagá Hills District, became Scheduled Districts for the purposes of the Scheduled Districts Act, 1874 (14 of 1874), but they are not Scheduled Districts within the meaning of this Act.

THE INDIAN MAJORITY ACT, 1875

ACT No. IX of 1875¹

[2nd March, 1875]

An Act to amend the Law respecting the age of majority

- Preamble** WHEREAS, in the case of persons domiciled in British India, it is expedient to prolong the period of nonage, and to attain more uniformity and certainty respecting the age of majority than now exists, It is hereby enacted as follows —
- Short title** 1 This Act may be called the Indian Majority Act, 1875
- Local extent** It extends to the whole of British India, and, so far as regards
2[British subjects to all Indian States],
- Commence ment and operation** and it shall come into force and have effect only on the expiration of three months from the passing thereof
- Savings** 2 Nothing herein contained shall affect—
- *(a) the capacity of any person to act in the following matters (namely) —marriage dower divorce and adoption

¹ For the Statement of Objects and Reasons see Gazette of India 1874 Pt V, p 153 for Proceedings in Council *see ibid* Supplement p 668 and Extra Supplement, dated 12 b May 1874 p 4 and *ibid*, 1875 Supplement p 333

This Act has been declared by notification under s 3 (a) of the Scheduled Districts Act 1874 (14 of 1874) to be in force in the following Scheduled Districts namely —

The Districts of Hazárbágh
Lhárdaga and Mánbhum and
Pargana Dhálbhum and the
Kcháin in the District of Sing
blum [The Lohárdaga District
included at this time the present
District of Pa'arau which was
separated in 1894. Lohárdaga is
now called the Ranchu District
Calcutta Gazette 1899 Pt I
p 44]

See Gazette of India 1881, Pt I, p 504

The North Western Provinces
Taráí

Ditto 1878, Pt I, p 505

It has also been declared to be in force in British Baluchistan by the British Baluchistan Laws Regulation, 1913 (2 of 1913)

² Subs. by the A O for 'subjects of Her Majesty to the dominions of Princes and States in India in alliance with Her Majesty

(b) the religion or religious rites and usages of any class of Her Majesty's subjects in India, or

(c) the capacity of any person who before this Act comes into force has attained majority under the law applicable to him

3 Subject as aforesaid, ¹[every minor of whose person or property or both a guardian other than a guardian for a suit within the meaning of Chapter XXXI of the Code of Civil Procedure,² has been or shall be appointed or declared by any Court of Justice before the minor has attained the age of eighteen years and every minor of whose property the superintendence has been or shall be assumed by any Court of Wards before the minor has attained that age] shall notwithstanding anything contained in the Indian Succession Act (No. X of 1865)³ or in any other enactment, be deemed to have attained his majority when he shall have completed his age of twenty one years and not before

Age of majority of persons domiciled in British India

Subject as aforesaid every other person domiciled in British India shall be deemed to have attained his majority when he shall have completed his age of eighteen years and not before

4 In computing the age of any person, the day on which he was born is to be included as a whole day, and he shall be deemed to have attained majority, if he falls within the first paragraph of section 3 at the beginning of the twenty-first anniversary of that day and if he falls within the second paragraph of section 3 at the beginning of the eighteenth anniversary of that day

Age of majority how computed

Illustrations

(a) Z is born in British India on the first day of January 1850 and has a British Indian domicile. A guardian of his person is appointed by a Court of Justice. Z attains majority at the first moment of the first day of January 1871

(b) Z is born in British India on the twenty-ninth day of February 1852 and has a British Indian domicile. A guardian of his property is appointed by a Court of Justice. Z attains majority at the first moment of the twenty-eighth day of February 1873

(c) Z is born on the first day of January 1850. He acquires a domicile in British India. No guardian is appointed of his person or property by any Court of Justice nor is he under the jurisdiction of any Court of Wards. Z attains majority at the first moment of the first day of January 1868

¹ Substituted by the Guardians and Wards Act, 1890 (8 of 1890) s. 52 for every minor of whose person or property a guardian has been or shall be appointed by any Court of Justice and every minor under the jurisdiction of any Court of Wards

² See now the Code of Civil Procedure, 1908 (5 of 1908) Sch. I, Order XXXII

³ See now the Indian Succession Act 1925 (39 of 1925)

THE INDIAN LAW REPORTS ACT, 1875.

ACT No XVIII OF 1875.¹

[13th October, 1875]

An Act for the improvement of Law Reports.

2 * * * *

Short title

1 This Act may be called the Indian Law Reports Act, 1875

Local
extent

It extends to the whole of British India,

Commence-
mentAnd it shall come into force on such day as the ³[Central Government] notifies in this behalf in the ⁴[Official Gazette]

2 [Repeal of Act II of 1875] Rep by the Repealing Act, 1876 (XII of 1876)

Authority
given
only to
authorized
reports3 No Court shall be bound to hear cited, or shall receive or treat as an authority binding on it, the report of any case ⁵[decided on or after the said day by any Court in British India which is a High Court for the purposes of the Government of India Act, 1935], other than a ²⁶report published under the authority of ⁶[any Provincial Government] CAuthority
of judicial
decisions

4 Nothing herein contained shall be construed to give to any judicial decision any further or other authority than it would have had if this Act had not been passed

¹ For the Statement of Objects and Reasons, see Gazette of India, 1875, Pt V, p 139, for Proceedings in Council, see *ibid*, Extra Supplement, dated 31st July 1875, p 5, and *ibid*, Extraordinary, dated 25th October 1875, p 1

This Act has been declared, by notification under s 3 (a) of the Scheduled Districts Act, 1874 (14 of 1874) to be in force in the following Scheduled Districts, namely —

The Districts of Hazáribágh, Lohárdaga and Mánbhum, and Pargana Dálbhum and the Kolhán in the District of Singbhum [The District of Lohardaga included at this time the present District of Palamau, which was separated in 1894, Lohárdaga is now called the Ranchi District, see Calcutta Gazette, 1899, Pt I, p 44] . See Gazette of India, 1881, Pt I, p 504

² Preamble rep by the A O

³ Subs by the A O for "G G in C"

⁴ Subs by the A O for "Gazette of India"

⁵ Subs by the A O for "decided by any of the said High Courts or by the Chief Court of Oudh on or after the said day For list of courts which are High Courts for the purposes of the Government of India Act, 1935, see s 219 of that Act

⁶ Subs by the A O for "any L, G" which had been subs by the Devolution Act, 1920 (38 of 1920), s 2 and Sch I, for "the G G in C"

THE CENTRAL PROVINCES LAWS ACT, 1875

ACT No XX OF 1875¹

[9th December 1875]

An Act to declare and amend the law in force in the
Central Provinces

WHEREAS it is expedient to declare and amend certain portions of the law in force in the Central Provinces It is hereby enacted as follows —

1 This Act may be called the Central Provinces Laws Act, 1875 Short title

It extends to the territories now under the administration of the Local
2[Provincial Government] of the Central Provinces extent

And it shall come into force on the passing thereof Commence
ment

2 On and from the date on which this Act comes into force the following shall be repealed, that is to say,— Repeal of
enactments
and rules

(a) all Bengal Regulations except the Regulations or parts of Regulations hereinafter declared to be in force,

(b) all Acts of the 3[Central Legislature] (except the Acts mentioned in the schedule hereto annexed) which do not expressly or by necessary implication extends to the said territories or any part thereof, and have not been extended thereto in exercise of a power conferred by an Act of the 3[Central Legislature]

(c) all rules, regulations and enactments not being Statutes, Bengal Regulations, Acts of the 3[Central Legislature], or rules or regulations made in exercise of a power conferred by a Statute, Bengal Regulation or Act of the 3[Central Legislature]

4 * * * * *

3 On and from the said date the enactments specified in the schedule hereto annexed shall be deemed to be in force throughout the said territories to the extent mentioned in the third column of the said schedule Certain
enactments
to be
deemed to
be in force

¹ For Statement of Objects and Reasons, see Gazette of India, 1875 Pt V, p 152, and for Proceedings in Council see *ibid*, Extra Supplement, dated 14th August 1875, p 66 *ibid*, dated 21st August 1875, p 6, and *ibid*, Supplement, p 981

² Subs by the A O for 'Chief Commissioner'

³ Subs by the A O for 'G G in C' For definition of "Central Legislature" see the General Clauses Act, 1897 (10 of 1897), s 3 (8 ac)

⁴ The proviso as to the law relating to land revenue and Courts of Wards was rep by the Amending Act, 1891 (12 of 1891)

But the powers and duties incident to the operation of the same enactments, so far as such powers and duties are referred to in the fourth column of the said schedule, shall be exercised and performed by the authorities mentioned in that column

Nothing in this section shall be deemed to affect the operation of any enactment not mentioned in the said schedule

Confirm
ation of
existing
Acts

4 Every Act of the ¹[Central Legislature] which extends, or can by notification be extended to the territories which were under the administration of the said ²[Provincial Government] at the time of the passing thereof shall extend or may by notification be extended as the case may be to all the territories now under the administration of the said ²[Provincial Government]

Rule of
decision in
cases of
certain
classes

35 In questions regarding inheritance special property of females betrothal marriage dower adoption guardianship minority bastardy, family relations wills legacies gifts partitions or any religious usage or institution the rule of decision shall be the Muhammadan law in cases where the parties are Muhammadans and the Hindu law in cases where the parties are Hindus except in so far as such law has been by legislative enactment altered or abolished or is opposed to the provisions of this Act

Provided that when among any class or body of persons or among the members of any family any custom prevails which is inconsistent with the law applicable between such persons under this section and which if not inconsistent with such law would have been given effect to as legally binding such custom shall notwithstanding anything herein contained be given effect to

Rules in
cases not
expressly
provided
for

6 In cases not provided for by section 5 or by any other law for the time being in force the Courts shall act according to justice equity and good conscience

Articles
exempt
from
attachment

7 Implements of husbandry and cattle for agricultural purposes and implements of trade are exempted from attachment and sale in execution of decrees of the Civil Courts

Power to
make
subsidiary
rules

8 The said ²[Provincial Government] may from time to time make rules consistent with this Act as to the following matters —

(a) the maintenance of watch and ward and the establishment of proper system of conservancy and sanitation at fairs and other large public assemblies

¹ Subs by the A O for G G in C

² Subs by the A O for Chief Commissioner

³ The provisions of this section have been rep in so far as they are inconsistent with the provisions of the Muslim Personal Law (*Shari'at*) Application Act 1937 (26 of 1937) see s 6 of that Act

(b) the imposition of taxes for the purposes mentioned in clause (a) of this section on persons holding or joining any of the assemblies therein referred to,

(c) the custody of judicial records civil and criminal 1* *

2* * * * *

9 The ³[Provincial Government] may in making any rule under this Act attach to the breach of it in addition to any other consequences that would ensue from such breach a punishment on conviction before a Magistrate not exceeding one month's imprisonment or two hundred rupees fine, or both

Penalty for breach of rules

10 All rules made under this Act shall 4* * * be published in the ⁵[Official Gazette] and shall thereupon have the force of law

* Publication of rules
Force of rules

⁶[11 Sections 184 185 and 189 of the Code of Civil Procedure⁷ are hereby repealed]

Local repeal, in part, of Code of Civil Procedure

⁶[12 For sections 182 190 and 191 of the same Code⁸ the following shall be substituted (namely) —

Sections substituted in same Code

182 A note of the essential points of the evidence of each witness shall be made at the time and in the course of oral examination by the Judge in his own language or in English if he is sufficiently acquainted with that language and such notes shall be filed with and form part of the record of the case

Note of evidence to be taken

190 If the Judge be prevented from making a note as above required he shall record the reason of his inability to do so, and shall cause such note to be made in writing from his dictation in open Court and shall sign the same and such note shall form part of the record

Judge unable to make note to record reason of his inability

191 When the Judge making a note of the evidence or causing one to be made as above required dies or is removed from the Court before the conclusion of the suit his successor may if he thinks fit, deal with such note as if he himself had made it or caused it to be made]

Power to take note made by Judge dying or removed before conclusion of suit

¹ The words "and the destruction from time to time of such of the said records as it may be deemed unnecessary to keep" rep. by the Destruction of Records Act 1879 (3 of 1879)

² Cl (d) relating to the appointment duties punishment suspension and dismissal of all ministerial officers rep. by the A O These matters are now governed by s 241 of the G of I Act 1935.

³ Subs. by the A O for Chief Commissioner

⁴ The words "when sanctioned by the G G in C" rep. by the Devolution Act 1920 (38 of 1920) s 2 and Sch I

⁵ Subs. by the A O for C P Gazette

⁶ Ins. by the C P Laws Act 1879 (2 of 1879) s 2

⁷ See now the Code of Civil Procedure 1908 (5 of 1908) Sch I, Order XVIII, rules 8 9 and 13

⁸ See *ibid*, rules 5, 14 and 15

SCHEDULE

(See section 3)

A—BENGAL REGULATIONS¹

Number and year of Regulation	Subject	Extent of operation	Powers or duties how to be exercised or performed
1	2	3	4
* V of 1799	* Estates of Intes tates	* [Sections 4, 5, 6 and 7]	* [The functions of the Court of "Sadr Diwāna Adālat" and of "the Board of Revenue" shall be performed res pectively by the ² Judi cial Commissioner and by the ⁴ [Provincial Government]]
* XI of 1806	* Passage of Troops	* Sections 2 to 6 and sec tion 8, with the excep tion of such part as authorizes Collectors and their native officers, or Magistrates and their Police officers to give their official aid in procuring	* The powers ³ * * * of the "Board of Revenue" shall be exercised by the [Central Government]

¹ So much of Act 20 of 1875 as relates to the following Bengal Regulations was rep by the Act noted against each —

Ben Reg 1 of 1798	Transfer of Property Act 1882 (4 of 1882)
Ben Reg 17 of 1806	Transfer of Property Act, 1882 (4 of 1882)
Ben Reg 10 of 1804	Special Laws Repeal Act, 1922 (4 of 1922)
Ben Reg 20 of 1810	Cantonments Act, 1889 (13 of 1889)
Ben Reg 5 of 1817	Indian Treasure-trove Act, 1878 (6 of 1878)
Ben Reg 20 of 1825	Code of Criminal Procedure, 1882 (10 of 1882)

Ben Reg 6 of 1819 was rep in the C P by the Northern India Ferries Act, 1878 (17 of 1878), and later generally, by the Amending Act, 1891 (12 of 1891)

² Subs by the C P Laws (Amendment) Act, 1923 (C P 9 of 1923) s 2, for the original entries

³ See however the C P Courts Act 1917 (C P 1 of 1917), s. 31

⁴ Subs by the A O for 'L G

⁵ The words of the G G in C and rep by the A O

⁶ Subs by the A O for Chief Commissioner

SCHEDULE—continued

A —BENGAL REGULATIONS—concluded.

Number and year of Regulation.	Subject	Extent of operation	Powers or duties how to be exercised or performed
1	2	3	4
XI of 1806— <i>concl'd.</i>		coolies for the purpose of facilitating the march of troops or the progress of travellers, and with the exception, in section 8, of the words and figures ¹ "under the rules prescribed by Regulation V, 1804"	
**	*	*	*
XI of 1812	Foreign Immigrants	So much as has not been repealed	The powers of the "Nizamat Adalat" shall be exercised by the ² Judicial Commissioner
**	*	*	*
III of 1818	State Prisoners	So much as has not been repealed	
**	*	*	*
VI of 1825	Supply of troops on the march	The whole . . .	The powers of the "Board of Revenue" shall be exercised by the ⁴ [Central Government].
XI of 1825 .	Alluvion and Diluvion.	The whole	
**	*	*	*
V of 1827 .	Administration of landed property.	So much as has not been repealed, except the words and figures "and clauses 5 and 6, Section XVI, Regulation III, 1803".	The powers of the "Board of Revenue" shall be exercised by the ⁴ [Provincial Government]

¹ These words and figures have since been rep by the Amending Act, 1891 (12 of 1891)

² See first note on preceding page

³ See however the C P Courts Act, 1917 (C P 1 of 1917), s 31

⁴ Subs by the A O for 'Chief Commissioner'

Chota Nagpur Encumbered Estates [1876 • Act VI.]

SCHEDULE—concluded

B—ACTS OF THE GOVERNOR GENERAL IN COUNCIL

Number and year of Act	Subject	Extent of operation.
1	2	3
VIII of 1851	Tolls on Roads and Bridges	The whole Act, except section 1, and the schedule
1*	*	*
XIII of 1857	Opium	Sections 21, 22, 23, 25, 26, 27, 28 29
1*	*	*
XV of 1861	Tolls	The whole Act

THE CHOTA NAGPUR ENCUMBERED ESTATES ACT,
1876

CONTENTS

PREAMBLE

SECTIONS

I—PRELIMINARY

1 Short title

II—VESTING ORDER

2 Power to vest management of property in an officer appointed by Commissioner

2A Power of Deputy Commissioner to order production of statement and documents

2B Power of Commissioner to prohibit sale of immovable property

¹ The entry relating to Act 18 of 1853 (Sale of Spirits in Cantonments) was rep by the Amending Act, 1891 (12 of 1891)

² The entry relating to the Minors Act, 1858 (40 of 1858), was rep by the Guardians and Wards Act 1890 (8 of 1890)

SECTIONS

3 Effect of order

Bar of suits

Freedom from arrest

Movable property not attachable for prior debts

Cessation of power to alienate

Immovable property freed from attachment

Cessation of power to contract

III — DUTIES OF MANAGER

4 Manager to receive rents and profits and pay therefrom—

the Government demand

rent due to superior landlord

for maintenance of holder and his heir,

loans raised for estate

costs of repairs and improvements costs of management,
debts and liabilities

IV — SETTLEMENT OF DEBTS

5 Notice to claimant against holder of property

Notice how published

6 Claim to contain full particulars

Documents to be given up

Entries in books

Exclusion of documents not produced

7 Debt not duly notified to be barred

Admission of claim within further period

Barring of debts incurred after making petition for post-
ponement of orders for application of Act

8 Determination of debts

9 Power to inquire into consideration for leases or grants

Power to set aside leases or grants

10 Appeal to Deputy Commissioner

Appeal to Commissioner.

10A Review by Commissioner

11 Scheme for settlement of debts

11A Proceedings of Commissioner on submission of scheme

SECTIONS

- 11B Power of Commissioner to relinquish management or modify approved scheme
- 12 Restoration of owner to his property
 - Restoration to be notified
 - Revival of barred proceedings and debts
 - Re instatement of mortgagees
 - Period of limitation as to revived proceedings and debts
- 12A Continuance of disabilities after restoration of property to owner

V—POWERS OF MANAGER

- 13 Power to call for further particulars
- 14 Power to summon witnesses and compel production of documents
- 14A Power to order production of title to tenures and under-tenures
- 15 Investigation to be deemed a judicial proceeding
 - Statements of persons examined to be evidence
- 16 Manager to have powers of holder of estate
 - Power to remove mortgagee or conditional vendee in possession
- 17 Power to lease
- 18 Power of Manager to raise money by mortgage, sale or loan
- 18A Freedom from obligation to inquire into necessity for, or application of, money
- 18B Power of Manager to contract and take action for the benefit of the property

VI—MISCELLANEOUS

- 19 Power to make rules
- 19A Power to make orders as to education of holder's children.
 - Penalty for disobedience
- 19B Recovery of fines
- 20 Power to appoint new Manager-
- 21 Managers to be public servants
- 21A Control by Board of Revenue
- 21B Suits and appeals by and against holder during management-

SECTIONS.

22 Bar of suits

23 Saving of jurisdiction of Courts in Chota Nagpur in respect of certain suits

24 [Repealed]

ACT No. VI OF 1876¹

[14th March, 1876]

An Act to relieve certain landholders in Chota Nagpur

Whereas it is expedient to provide for the relief of holders of land in Chota Nagpur who may be in debt, and whose immovable property may be subject to mortgages, charges and liens It is hereby enacted as follows —

I —PREFATORY

1 This Act may be called the Chota Nagpur Encumbered Estates Act, 1876

II —VESTING ORDER

2 Whenever any holder of immovable property, or (when such holder is a minor, or of unsound mind, or an idiot) his guardian, committee or other legal curator, or the person who would be heir to such holder if he died intestate, or (when such person is a minor, or of unsound mind, or an idiot) his guardian, committee or other legal curator,

Power to vest management of property in an officer appointed by Commissioner

2[or the Deputy Commissioner within whose jurisdiction any such property belonging to such holder is situate, when—

(i) attachment has been made of, or a proclamation has been issued for the sale of, such property or any portion thereof,

¹ For Statement of Objects and Reasons see Gazette of India, 1876, Part V, p 21; and for Proceedings in Council, see *ibid*, 1876, Supplement, pp 54, 59, 195, 218 289 and 322

This Act applies only to the Chota Nagpur Division of Bihar It has also been applied, with certain modifications to the Deo Estate in the Gaya District—see the Deo Estate Act 1856 (9 of 1856)

² Subs by the Chota Nagpur Encumbered Estates (Amendment) Act, 1909 (Ben. 3 of 1909) s 2 (1), for or, when any such property belonging to such holder has been attached in execution of a decree of a Civil Court, the Deputy Commissioner within whose jurisdiction such property is situate

(II —Vesting Order)

in execution of a decree or order of a Civil Court or a Revenue Court or

- (ii) such Deputy Commissioner is satisfied after making such inquiry as he may think fit and after considering and placing on record all representations (if any) made by such holder that such holder has entered upon a course of wasteful extravagance likely to dissipate his property]

applies in writing to the Commissioner stating that the holder of the said property is subject to or that his said property is charged with, debts or liabilities other than debts due or liabilities ¹[incurred to the Crown] and requesting that the provisions of this Act be applied to his case

the Commissioner may with the previous consent of the ²[Provincial Government] ³[(to be obtained through the Board of Revenue)] by order published in the ⁴[Official Gazette] appoint an officer (herein after called the Manager) and vest in him the management of the whole or any portion of the immovable property of or to which the said holder is then possessed or entitled in his own right or which he is entitled to redeem or which may be acquired by or devolve on him or his heir during the continuance of such management

⁵Provided as follows—

First if any holder referred to in clause (ii) of this section petitions the Commissioner while the inquiry referred to in that clause is being made to postpone until the petitioner has been heard the passing of orders on any request that the Deputy Commissioner may make for applying the provisions of this Act to his case

and if a request as aforesaid be made by the Deputy Commissioner

the Commissioner shall appoint a day for hearing the petitioner and if he appears either in person or by agent on the day so appointed and on the subsequent day (if any) to which the hearing is adjourned the Commissioner shall not pass any order in the matter until he has been heard

¹ Sub by the A O for incurred to Govt

² Sub by the A O for Tenant Governor of Bengal

³ Ins by the Chota Nagpur Encumbered Estates (Amendment) Act 1903 (Ben of 1903) s 2 (2)

⁴ Subs by the A O for Calcutta Gazette

⁵ Provisions by s 2 (3) of Ben Act 3 of 1903

(II—Vesting Order)

Secondly, if any holder referred to in clause (u) of this section petitions the Board of Revenue, while any proceedings are pending before the Commissioner under proviso First, to postpone, until the petitioner has been heard, the passing of orders on any request that the Commissioner may make for the consent of the ¹[Provincial Government] to the application of the provisions of this Act to his case

and if a request as aforesaid be made by the Commissioner

the Board of Revenue shall appoint a day for hearing the petitioner, and if he appears, either in person or by agent, on the day so appointed, and on the subsequent day (if any) to which the hearing is adjourned, the Board shall not pass any order in the matter until he has been heard

Thirdly, the consent of the ¹[Provincial Government] shall not be given in the case of any holder referred to in clause (u) of this section unless either—

such holder belongs to a family of political or social importance, or

the ¹[Provincial Government] is satisfied that it is desirable in the interests of the tenants of such holder that such consent should be given]

²[Every application under this section must state—

(a) the particulars of the debts and liabilities as aforesaid to which the said holder is subject or with which his immovable property is charged and

(b) the particulars of the immovable property of or to which he is then possessed or entitled in his own right or which he is entitled to redeem

Every such application must except when it is made by a Deputy Commissioner be verified by the applicant or by some other competent person in the manner required by law³ for the verification of plaints, and if it contains any averment which the person making the verification knows or believes to be false or does not know or believe to be true, he shall be deemed to have given false evidence within the meaning of the Indian Penal Code]

4[2A (1) For the purpose of making an application under section 2 in the case of any holder the Deputy Commissioner may, by written

Power of
Deputy
Commis-
sioner to

¹ Subs by the A. O. for Lieutenant Governor

² Inserted by the Chota Nagpur Encumbered Estates (Amendment) Act, 1884 (5 of 1884) s 2

³ See the Code of Civil Procedure 1908 (5 of 1908) Sch I, Order VI, rule 15

⁴ S 2A ins by the Chota Nagpur Encumbered Estates (Amendment) Act 1909 (Ben 3 of 1909) s 3

(II—Vesting Order)

order pro-
duction of
statement
and
documents

order, require the said holder to produce before him, on a date to be stated in such order,—

(i) a statement in writing, showing—

(a) all debts and liabilities to which the said holder is subject,

(b) the amount, kind and particulars of his property, and the annual value of any such property not consisting of money,

(c) the names and residences of his creditors, so far as they are known to, or can be ascertained by him, and

(d) such other information as the Deputy Commissioner may, by his order, require, and

(ii) such documents relating to his estate, which are in the possession, power or control of the holder, as the Deputy Commissioner may deem necessary

(2) The Deputy Commissioner may, by a like order, call upon any person in whose possession, power or control he has reason to believe there is any document relating to a debt or liability to which the holder is subject, to submit the same to him for the aforesaid purpose.]

Power of
Commissioner to
prohibit sale
of immov-
able
property

¹[2B At any time after the receipt of an application under section 2 from or in the case of any holder, the Commissioner may, by order, prohibit the sale of the immovable property of such holder or any portion thereof, in execution of any decree or order of any Civil or Revenue Court, until the passing of final orders on such application, either rejecting it or vesting the property in a manager.]

Effect of
order

³ ²[On the publication of an order under section 2] the following consequences shall ensue —

Bar of suits

First, all proceedings which may then be pending in any Civil Court in British India, ³[or in any Revenue Court in Bengal], in respect to such debts or liabilities, shall be barred and all processes, executions and attachments for or in respect of such debts and liabilities shall become null and void,

Freedom
from arrest.

Secondly, so long as such management continues,

the holder of the said property and his heir shall not be liable to arrest for or in respect of the debts and liabilities to which the said holder was immediately before the said publication subject or with

¹ S. 2B ins. by the Chota Nagpur Encumbered Estates (Amendment) Act 1911 (Ben. 4 of 1911) s. 2

² Subs. by the Chota Nagpur Encumbered Estates (Amendment) Act, 1884 (5 of 1884) s. 3 for "On such publication"

³ Ins. by the Chota Nagpur Encumbered Estates (Amendment) Act 1909 (Ben. 3 of 1909), s. 4 (1)

(II—Vesting Order III—Duties of Manager)

which the property so vested as aforesaid or any part thereof was at the time of the said publication charged other than debts due, or liabilities ¹[incurred to the Crown]

nor shall their movable property be liable to attachment or sale, under process of any Civil Court in British India ²[or any Revenue Court in Bengal] for or in respect of such debts and liabilities other than as aforesaid and

Movable property not attachable for prior debts

Thirdly so long as such management continues

Cessation of power to alienate

(a) the holder of the said immovable property and his heir shall be incompetent to mortgage charge lease or alienate their immovable property or any part thereof or to grant valid receipts for the rents and profits arising or accruing therefrom

(b) such property shall be exempt from attachment or sale under such process as aforesaid except for or in respect of debts due or liabilities ¹[incurred to the Crown] and

Immovable property freed from attachment

(c) the holder of the same property and his heir shall be incapable of entering into any contract which may involve them or either of them in pecuniary liability

Cessation of power to contract

III—DUTIES OF MANAGER

4 The Manager shall during his management of the said immovable property receive and recover all rents and profits due in respect thereof and shall upon receiving such rents and profits give receipts for the same

Manager to receive rents and profits

From the sums so received he shall pay—

first the Government revenue and all debts or liabilities for the time being due or ¹[incurred to the Crown]

and pay therefrom—the Government

secondly in the case of under tenures the rent (if any) due to the superior landlord in respect of the said property

rent demand due to superior or landlord for maintenance of holder and his heir

thirdly such annual sum as appears to the Commissioner requisite for the maintenance of the holder of the property his heir, and their families

³[*fourthly* all sums due in repayment of loans effected under the power conferred by clause (c) of section 18]

loans raised for estate

⁴[*fifthly*] the costs of such repairs and improvements of the property as appear necessary to the Manager and are approved by the Commissioner

costs of repairs and improvements

¹ Subs. by the A. O. for incurred to Govt

² Ins. by s. 4 (2) of the Chota Nagpur Encumbered Estates (Amendment) Act 1909 (Ben. 3 of 1909) The term Bengal includes the former Province of Bihar and Orissa

³ Ins. by s. 5 (1) *id. d.*

⁴ Subs. by s. 5 (1) *id. d.* for fourthly

(III—Duties of Manager IV—Settlement of Debts)

costs of
management
debts and
liabilities

and the residue shall be applied in discharge of the costs of the management, and in settlement of such debts and liabilities of the holder of the property and his heir as may be established under the provisions hereinafter contained

1 * * * *

IV—SETTLEMENT OF DEBTS

Notice to
claimant
against
holder
of property

5 On the publication of the order vesting in him the management of the said property the Manager shall publish a notice in English ²[and the language of the district or estate], calling upon all persons having claims against the holder of the said property to notify the same in writing to such Manager within three months from the date of the publication

Notice how
publ shed

Such notice shall be published by being posted at the *cutcheries* in the district or districts in which the said property lies and at such other places as the Manager thinks fit

Claim to
contain full
particulars

6 Every such claimant shall along with his claim present full particulars thereof

Documents to
be given up

Every document on which the claimant founds his claim or on which he relies in support thereof shall be delivered to the Manager along with the claim

Entries in
books

If the document be an entry in any book the claimant shall produce the book to the Manager together with a copy of the entry on which he relies The Manager shall mark the book for the purpose of identification and after examining and comparing the copy with the original, shall return the book to the claimant

Exclusion of
documents
not
produced

If any document in the possession or under the control of the claimant is not delivered or produced by him to the Manager along with the claim the Manager may refuse to receive such document in evidence on the claimant's behalf at the investigation of the case

Debt not
duly notified
to be barred

7 Every debt or liability other than debts due or liabilities ³[incurred to the Crown] or (in the case of under tenures) the rent due to the superior landlord to which the holder of the property is subject or with which the property is charged and which is not duly notified to the Manager within the time and in manner hereinbefore mentioned shall be barred

¹The words and also in or towards the repayment either before or after the liquidation of such debts and liabilities of any loan received from the Government by the Manager under this Act rep by the Chota Nagpur Encumbered Estates (Amendment) Act 1909 (Ben 3 of 1909) s 5 (2)

² Subs by s 6 *ibid* for Urdu and Hindi

³ Subs by the A O for incurred to Govt.

(IV—Settlement of Debts)

Provided that, when proof is made to the Manager that the claimant was unable to comply with the provisions of sections 5 and 6, the Manager may admit his claim within the further period of 1[six months] from the expiration of the said period of three months

Admission of claim within further period

²[If a holder of property has petitioned the Commissioner under the first proviso in section 2 or the first proviso to section 12A, sub-section (b) to postpone the passing of orders on any request that the Deputy Commissioner might make for applying or re-applying the provisions of this Act to his case

Barring of debts incurred after making petition for postponement of orders for application of Act

every debt or liability which such holder has after the date on which the said request was made incurred or charged upon his property, shall be barred with the exception of—

- (a) debts due or liabilities ³[incurred to the Crown]
- (b) debts or liabilities which the Deputy Commissioner is satisfied had necessarily to be incurred for the maintenance of such holder or his family
- (c) in the case of under tenures the rent due to the superior landlord and
- (d) interest due in respect of debts or liabilities incurred before the said date]

8 The Manager shall in accordance with the rules to be made under this Act determine the amount of all principal debts and liabilities justly due to the several creditors of the holder of the property and to persons holding mortgages charges or liens thereon and the interest (if any) due at the date of such determination in respect of such debts and liabilities

Determination of debts

9 If such property or any part thereof be in the possession of any person claiming to hold it under a lease ⁴[or rent free or maintenance grant] dated within the three years immediately preceding the publication of the order mentioned in section 2 the Manager with the sanction of the Deputy Commissioner and Commissioner (or of the Commissioner only if the Deputy Commissioner be himself the Manager), may inquire into the sufficiency of the consideration for which the lease ⁴[or grant] was given

Power to inquire into consideration for leases or grants

¹ Subs by the Chota Nagpur Encumbered Estates (Amendment) Act 1884 (5 of 1884) s 5 for nine months

² Ins by the Chota Nagpur Encumbered Estates (Amendment) Act 1909 (Ben 3 of 1909) s 7

³ Subs by the A O for incurred to Govt

⁴ Ins by the Chota Nagpur Encumbered Estates (Amendment) Act 1909 (Ben 3 of 1909) s 8

(IV—Settlement of Debts)

Power to set aside leases or grants

and if such consideration appear to him insufficient, may by order either set aside the lease ¹[or grant] or cause the person so in possession to pay such consideration for the said lease ¹[or grant] as the Manager thinks fit and in default of such payment the lease ¹[or grant] shall be cancelled

¹[Provided that no rent free or maintenance grant shall be set aside or cancelled without the previous sanction of the Commissioner which may be accorded only if he is satisfied that the grant was not made in good faith]

Appeal to Deputy Commissioner

10 An appeal against any refusal admission determination or order under section 6 7 8 or 9 ²[except a refusal under the proviso to section 9] shall lie if preferred within six weeks from the date thereof to the Deputy Commissioner within whose jurisdiction the property is situate and the decision of the Manager if no such appeal has been so preferred ³[shall subject to the provisions of sections 10A and 21A be final]

Provided that if the Deputy Commissioner be himself the Manager, the appeal shall lie to the Commissioner

Appeal to Commissioner

An appeal shall lie from any decision of the Deputy Commissioner if preferred within six weeks of the date of his decision to the Commissioner and the decision of such Commissioner or of the Deputy Commissioner if no such appeal has been so preferred ³[shall subject to the provisions of sections 10A and 21A be final]

Review by Commissioner

⁴[10A The Commissioner may of his own motion review any order or proceeding under section 6 7 8 9 or 10 and may revise modify, or reverse the same]

Scheme for settlement of debts

11 When the amount due in respect of the debts and liabilities mentioned in section 8 has been finally determined the Manager shall prepare and submit to the Commissioner a schedule of such debts and liabilities and a scheme for the settlement thereof * * *

¹ Ins by the Chota Nagpur Encumbered Estates (Amendment) Act 1909 (Her 3 of 1909) s 8

² Ins by s 9 *ibid*

³ Subs by s 9 *ibid* for shall be final

⁴ S 10A ins by s 10 *ibid*

* The words and such scheme when approved by the Commissioner shall be carried into effect and the second paragraph of s 11 were rep by the Chota Nagpur Encumbered Estates (Amendment) Act 1922 (B and O 8 of 1922) s 2

(IV.—Settlement of Debts.)

1[11A. The Commissioner may—

Proceedings
of Commis-
sioner on
submission
of scheme.

- (a) as often as he thinks fit before approving the scheme send it back to the Manager for revision, and direct him to make such further inquiry as may be requisite for the proper preparation thereof, or
- (b) approve the scheme, or any revised scheme, submitted to him, either as it stands or subject to such modification (if any) as he may deem expedient

(2) Such scheme or revised scheme when so approved shall be carried into effect subject to any modifications that may subsequently be made therein under section 11B

11B If at any time after the approval of the scheme or of any modification thereof made in the manner hereinafter provided in this section, new circumstances come into existence, facts are disclosed or events occur which, in the opinion of the Commissioner, render the scheme unsuitable for the settlement of the debts and liabilities mentioned in the schedule referred to in section 11, the Commissioner may, with the previous sanction of the Board of Revenue direct—

Power of
Commis-
sioner to
relinquish
management
or modify
approved
scheme

- (a) that the management of the property be relinquished, or
- (b) that the scheme be modified or, if it has already been modified under this section that it be further modified, and any modification made in compliance with such direction shall, after it has been approved by the Commissioner, take effect as part of the scheme]

12 2[When all the debts and liabilities mentioned in the schedule referred to in section 11, and the amount of any loan 3[effected under the power conferred by clause (c) of section 18,] together with the interest (if any) due thereon, have been paid and discharged],

Restoration
of owner to
his property.

2[or if the Commissioner, at any time before a scheme has been approved by him under section 4[11A], thinks that the provisions of

1 Ss 11A and 11B ins. by the Chota Nagpur Encumbered Estates (Amendment) Act, 1922 (B & O 8 of 1922), s 3

2 Subs for original clause by the Chota Nagpur Encumbered Estates (Amendment) Act, 1884 (5 of 1884), s 6

3 Subs for the words "received from the Government under section eighteen" by the Chota Nagpur Encumbered Estates (Amendment) Act, 1909 (Ben. 3 of 1909), s 11 (1)

4 Subs for the figures "11" by the Chota Nagpur Encumbered Estates (Amendment) Act, 1922 (B & O 8 of 1922), s 4

(IV — Settlement of Debts)

this Act should not continue to apply to the case of the holder of the said property or his heir], ¹[or if after a scheme has been so approved a direction is made under section 11B for the relinquishment of the management of the property]

²[or if at any time an arrangement is made for the satisfaction of the debts and liabilities which is accepted by the creditors and approved by the Commissioner]

such holder or his heir shall be restored to the possession and enjoyment of the property or of such part thereof as has not been sold by the Manager under the power contained in section 18 but subject to the leases and mortgages (if any) granted and made by the Manager under the powers hereinafter contained

³[Provided that where a fresh order has been made under section 2 in pursuance of section 12A sub section (5) re appointing a Manager and vesting in him the management of the whole or any portion of the property of any holder such property shall not be restored to such holder but shall be retained by the Manager for restoration to the heir of such holder in due course]

Restoration
to be
notified

Revival of
barred pro-
ceedings and
debts

Reinstatement of
mortgagees

Period of
limitation as
to revived
proceedings
and debts

Continuance
of debts and
liabilities

Where the holder of the property or his heir is so restored under the circumstances mentioned in the second clause of this section such restoration shall be notified in the ⁴[Official Gazette] and thereupon the proceedings processes executions and attachments mentioned in section 3 (so far as they relate to debts and liabilities which the Manager has not paid off or compromised) and the debts and liabilities barred by section 7 shall be revived and any mortgagee or conditional vendee dispossessed under section 1f shall be reinstated unless his claim under the mortgage or conditional sale has been satisfied

and in calculating the periods of limitation applicable to such revived proceedings and to suits to recover and enforce such revived debts and liabilities the time intervening between such restoration and the publication of the order mentioned in section 2 ⁵[or the making of the order (if any) mentioned in section 2B] shall be excluded

⁶[12A (1) When the possession and enjoyment of property is restored under the circumstances mentioned in the first or the third

¹ Ins by the Chota Nagpur Lumbered Estates (Amendment) Act 1922 (B & O 8 of 1922) s 4

² Ins by the Chota Nagpur Lumbered Estates (Amendment) Act 1884 (5 of 1884) s 6 (3)

³ Ins by the Chota Nagpur Lumbered Estates (Amendment) Act 1909 (Ben 3 of 1909) s 11 (2)

⁴ Subs by the A O for Cutch Gazette

⁵ Ins by the Chota Nagpur Lumbered Estates (Amendment) Act 1911 (Ben 4 of 1911) s 3

⁶ S 12A ins by Ben Act 3 of 1909 s 12

(IV—Settlement of Debts)

clause of section 12, to the person who was the holder of such property when the application under section 2 was made such person shall not be competent, without the previous sanction of the Commissioner,— after restoration of property to owner

(a) to alienate such property or any part thereof, in any way, or

(b) to create any charge thereon extending beyond his lifetime

(2) If the Commissioner refuses to sanction any such alienation or charge an appeal shall lie to the Board of Revenue, whose decision shall be final

(3) Every alienation and charge made or attempted in contravention of sub section (1) shall be void

(4) The Deputy Commissioner may at any time either of his own motion or on the application of any person interested make an inquiry to ascertain whether any holder of property who is referred to in sub section (1) has made or attempted to make any alienation or charge in contravention of that sub section and shall consider and place on record all representations (if any) made by such holder and by the person in whose favour such alienation or charge is alleged to have been made

(5) If the Deputy Commissioner is satisfied after making such an inquiry that such holder has made or attempted to make any alienation or charge in contravention of sub section (1) he may make a report to the Commissioner setting forth the result of the inquiry and showing all debts and liabilities to which such holder is subject and requesting that the provisions of this Act be re applied to his case and the Commissioner may with the previous consent of the ¹[Provincial Government] (to be obtained through the Board of Revenue) publish a fresh order under section 2 re appointing a Manager and vesting in him the management of the whole or any portion of the property of such holder

Provided as follows—

First if the said holder petitions the Commissioner, while the said inquiry is being made to postpone until the petitioner has been heard the passing of orders on any request that the Deputy Commissioner may make for re applying the provisions of this Act to his case,

and if a request is aforesaid be made by the Deputy Commissioner the Commissioner shall appoint a day for hearing the petitioner and if he appears either in person or by agent on the day so appointed and on the subsequent day (if any) to which the hearing is adjourned the Commissioner shall not pass any order in the matter until he has been heard,

¹ Subs by the A O for Lieutenant Governor

(IV—Settlement of Debts V—Powers of Manager)

Secondly, if the said holder petitions the Board of Revenue, while any proceedings are pending before the Commissioner under proviso first, to postpone until the petitioner has been heard, the passing of orders on any request that the Commissioner may make for the consent of the ¹[Provincial Government] to the re application of the provisions of this Act to his case

and if a request as aforesaid be made by the Commissioner,

the Board of Revenue shall appoint a day for hearing the petitioner, and if he appears, either in person or by agent, on the day so appointed, and on the subsequent day (if any) to which the hearing is adjourned, the Board shall not pass any order in the matter until he has been heard

(6) No suit shall be brought to charge any person to whom property is restored under the circumstances mentioned in the first or the third clause of section 12—

(i) upon any promise, made after such restoration, to pay any debt contracted while the management of the property was vested in the Manager, or

(ii) upon any ratification, made after such restoration, of any promise or contract made while the management of the property was vested in the Manager,

whether or not there be any new consideration for such promise or ratification]

V—POWERS OF MANAGER

Power to
call for
further
particulars

13 The manager may, from time to time, call for further and more detailed particulars of any claim preferred before him under this Act, and may at his discretion refuse to proceed with the investigation of the claim until such particulars are supplied

Power to
summon
witnesses,
and compel
production
of documents

14 For the purposes of this Act the Manager may summon and enforce the attendance of witnesses and compel them to give evidence and compel the production of documents by the same means, and, as far as possible, in the same manner, as is provided in the case of a Civil Court by the Code of Civil Procedure ²

VIII

Power to
order pro-
duction of
title to
tenures and

3[14A (1) The Manager may order all holders of tenures and under tenures on property under his management to produce their evidence of title to such tenures and under tenures

¹ Subs 1y the A O for 'J' tenant-Governor

² See now the Code of Civil Procedure, 1908 (5 of 1908)

³ S 14A ins 1y the Chota Nagpur Encumbered Estates (Amendment) Act 1909 (Ben 3 of 1909), s 13

(V—Powers of Manager)

(2) Any person who refuses to comply with an order of the Manager under sub section (1) shall be liable by order of the Deputy Commissioner, to a fine not exceeding five hundred rupees under tenures

Provided that the Deputy Commissioner shall, before passing such order, hear any explanation or objection that may be made, by such person

15 Every investigation conducted by the Manager with reference to any claim preferred before him under this Act, or to any matter connected with any such claim shall be taken to be a judicial proceeding within the meaning of the Indian Penal Code Investigation to be deemed a judicial proceeding

And every statement made by any person examined by or before the Manager with reference to such investigation whether upon oath or otherwise shall be taken to be evidence within the meaning of the same Code Statements of persons examined to be evidence

16 The Manager shall have for the purpose of realizing and recovering the rents and profits of the said immovable property the same powers as the holder of the property would have had for such purpose if this Act had not been passed Manager to have powers of holder of estate

And if such property or any part thereof be in the possession of any mortgagee or conditional vendee the Manager may apply to the Court of the Deputy Commissioner within whose jurisdiction the property is situate, and such Court shall cause the same to be delivered to the Manager as if a decree therefor had been made in his favour but without prejudice to the mortgagee or vendee preferring his claim under the provisions hereinbefore contained Power to remove mortgagee or conditional vendee in possession

17 Subject to the rules made under section 19 the Manager shall have power to demise all or any part of the property under his management for any term of years ¹[or in perpetuity] to take effect in possession in consideration of any fine or fines or without fine and reserving such rents and under such conditions as may be agreed upon Power to lease

²[18 After a scheme has been approved by the Commissioner under section ³[11A] the Manager shall subject to the sanction of Commissioner, have power,— Power of Manager to raise money by mortgage, sale or loan.

(a) to demise by way of mortgage the whole or any part of such property for a term not exceeding twenty years from the date of publication of the order under section 2 or

¹ Subs for the words not exceeding twenty years absolute by the Chota Nagpur Encumbered Estates (Amendment) Act 1834 (5 of 1834) s 7

² Ss 18 18A and 18B subs for original s 18 by the Chota Nagpur Encumbered Estates (Amendment) Act 1909 (Ben 3 of 1909) s 14

³ Subs for the figures '11 by the Chota Nagpur Encumbered Estates (Amendment) Act 1922 (B and O 8 of 1922) s 5

(V—Powers of Manager VI—Miscellaneous)

- (b) to sell by public auction or by private contract and upon such terms as the Manager thinks fit such portion of such property as may appear expedient

for the purpose of raising any money which may be required for the settlement of the debts and liabilities to which the holder of the property is subject, or with which such property or any part thereof is charged or

- (c) to borrow money at such rate of interest as appears reasonable to the Board of Revenue

for the aforesaid purpose or for the purpose of meeting the costs of such repairs and improvements of the property as appear necessary to the Manager and are approved by the Commissioner

18A (1) A mortgagee advancing money upon any mortgage made under section 18 shall not be bound to see that such money is wanted or that no more than is wanted is raised

(2) The receipt of the Manager for any moneys paid to him as such shall discharge the person paying the same therefrom and from being concerned to see to the application thereof

18B Subject to the sanction of the Commissioner the Manager shall have power to enter upon any contract or to execute or relinquish any lease or counterpart of a lease or to take any action not otherwise provided for in this Act which in his opinion is necessary for the proper care and management of the property]

VI—MISCELLANEOUS

19 The ¹[Provincial Government] may ²* * * * * from time to time make rules consistent with this Act, to regulate the following matters—

- (a) the securities to be required from subordinate officers under this Act

³[(aa) the classes of cases which may be submitted by the Commissioner for the consent of the ⁴[Provincial Government] under section 2]

- (b) the notices to be given under this Act and the publication of such notices

¹ Subs. by the A. O. for Lieutenant Governor of Bengal

² The words subject to the control of the G. G. in C. ins. by the Decentralization Act 1914 (4 of 1914) s. 2 and Sch. Pt. I were rep. by the A. O.

³ Ins. by the Chota Nagpur Encumbered Estates (Amendment) Act 1834 (5 of 1834) s. 9

⁴ Subs. by the A. O. for Lieutenant Governor

Freedom from obligation to inquire into necessity for or application of money

Power of Manager to contract and take action for the benefit of the property

Power to make rules

(VI—Miscellaneous)

(c) the procedure to be followed in determining under section 8 the debts and liabilities due to creditors and other persons and in performing the other duties imposed on any officer by this Act

(d) the allowance of interest on each of the principal debts and liabilities so determined from the date on which it was incurred down to the date of the determination and on the aggregate amount of such debts and liabilities from the date of the determination down to the date of payment

(e) the order of paying debts and liabilities so determined and generally for the guidance of officers in all matters connected with the enforcement of this Act

Such rules when 1* * * published in the 2[Official Gazette] shall have the force of law

3[19A (1) The Commissioner may make such orders as to him may seem fit in respect of the education of any child of a holder whose property is being managed under the provisions of this Act otherwise than on the application of the Deputy Commissioner

Power to make orders as to education of holder's children

(2) Any person who disobeys any order made by the Commissioner under sub section (1) shall be liable by order of the Deputy Commissioner to a fine not exceeding five hundred rupees

Penalty for disobedience

Provided that the Deputy Commissioner shall before passing such order hear any explanation or objection that may be made by such person

19B Any fine imposed by the Deputy Commissioner under section 14A or section 19A shall be recoverable as an arrear of land revenue]

Recovery of fines

20 Whenever the Commissioner thinks fit he may appoint any officer to be a Manager in the stead of any Manager appointed under this Act and thereupon the property then vested under this Act in the former Manager shall become vested in the new Manager

Power to appoint new Managers

Every such new Manager shall have the same powers as if he had been originally appointed

21 Every Manager appointed under this Act shall be deemed a public servant within the meaning of the Indian Penal Code

Managers to be public servants

4[21A All orders or proceedings of the Commissioner and of the Deputy Commissioner under this Act shall be subject to the supervision and control of the Board of Revenue and the Board of Revenue may if it thinks fit, revise, modify or reverse any such order or proceeding

Control by Board of Revenue

1 The words approved by the Governor General in Council and rep by the Decentralization Act 1914 (4 of 1914) 2 and the Sch Pt I

2 Subs by the A O for Calcutta Gazette

3 Ss 19A and 19B ins by the Chota Nagpur Encumbered Estates (Amendment) Act 1909 (Ben 3 of 1909) s 15

4 Ss 21A and 21B ins by s 16 b 1

(VI—Miscellaneous)

Suits and
appeals by
and against
holder,
during
management

21B During the period of management,—

- (1) every suit or appeal by the holder shall be instituted in his name by the Manager,
- (2) in every pending suit or appeal in which the holder is plaintiff or defendant, the Manager shall be named as the representative of the holder for the purposes of the suit or appeal, and no application in any such suit or appeal shall be made to the Court on behalf of the holder except by the Manager.
- (3) no person other than the Manager shall be ordered to sue or be sued as next friend or guardian, or be named as guardian, of the holder, for a pending suit, and
- (4) the Court, upon application by the Manager or by any party to a suit, may order that the plaint or memorandum of appeal be amended so as to conform with the requirements of clause (1), or that the Manager be named as the representative of the holder as required by clause (2) of this section]

1[Provided that, if in any suit or appeal both the plaintiff and defendant are holders of separate property managed by the same Manager, the Commissioner shall appoint for each holder an officer other than the Manager to be his representative for the purposes of such suit or appeal and references in this section to the Manager shall be deemed to be references to such representative]

Bar of suits

22 No suit or other proceeding shall be maintained against any person in respect of anything done by him *bond fide* pursuant to this Act

Saving of
jurisdiction
of Courts in
Chota Nag
pur in
respect of
certain suits

23. 2[Subject to the provisions of section 21B] nothing in this Act precludes the Courts in Chota Nagpur having jurisdiction in suits relating to the succession to or claims of maintenance from, any immovable property brought under the operation of this Act from entertaining and disposing of such suits 3 *

24 [1st not to affect powers conferred by Bengal Act II of 1869]
Rep by the Chota Nagpur Encumbered Estates (Amendment) Act, 1909 (Ben Act III of 1909), s 18.

¹ Provisions by the Chota Nagpur Encumbered Estates (Amendment) Act, 1924 (B and O 2 of 1924) s 2

² Ins by the Chota Nagpur Encumbered Estates (Amendment) Act, 1909 (Ben 3 of 1909) s 17

³ The words 'but to all such suits the Manager of such property shall be made a party' rep by s 17, *ibid*

THE NATIVE COINAGE ACT, 1876

ACT No IX of 1876 ¹

[28th March 1876]

An Act to enable the Government of India to declare certain coins of ²[Indian States] to be a legal tender in British India

WHEREAS it is expedient to enable the Governor General in Council to declare that a tender of payment of money if made in certain coins made for or issued by ²[Indian States] shall be a legal tender in British India, It is hereby enacted as follows —

1 This Act may be called the Native Coinage Act 1876

Short title

It extends to the whole of British India,

Local extent

3* * *

2 ⁴[Interpretation clause] Rep by the A O

3 Subject to the provisions of section 4 the ⁵[Central Government] may, from time to time by notification in the ⁶[Official Gazette] declare that a tender of payment of money if made in the coins or the coins of any specified metal made under this Act for any ⁷[Indian State], shall be a legal tender in British India ⁸

Power to declare that the coins of an Indian State shall be legal tender.

¹ For the Statement of Objects and Reasons see Gazette of India 1876 Pt V p 36, for Proceedings in Council see *ibid* Supplement pp 178 192 and 405

This Act has been declared by notification under s 3 (a) of the Scheduled Districts Act 1874 (14 of 1874) to be in force in the following Scheduled Districts namely —

The Districts of Hazaribagh Lohardaga and Manbhum and Pargana Dhalbhum and the Kolhan in the District of Singhbhum [The District of Lohardaga included at this time the present District of Palamau which was separated in 1894 Lohardaga is now called the Ranchi District Calcutta Gazette 1899 Pt I p 44] See Gazette of India 1881 Pt I p 504

² Subs by the A O for Native States

³ The words "And it shall come into force at once" rep by the Repealing and Amending Act 1914 (10 of 1914)

⁴ S 2 which was rep by the A O read "In this Act 'Native State' means any State in India which is under the protection or political control of Her Majesty or of which the Government shall have acknowledged the supremacy of the British Crown For definition of Indian State see now the General Clauses Act 1897 (10 of 1897) s 3 (27b)"

⁵ Subs by the A O for G G in C

⁶ Subs by the A O for Gazette of India

⁷ Subs by the A O for Native State

⁸ For notifications issued under this section in respect of certain coins of (1) the Alwar State (2) the Bikaner State (3) the Dhar State and (4) the Sailana State see G R and O Vol II pp 24—33

^{4a} As to Bhopāl coins see the Bhopāl Coinage Act 1897 (11 of 1897) rep by the Amending Act 1903 (1 of 1903)

and the provisions of the Indian Coinage Act, 1870¹, shall apply to the coins to which such notification refers, so far as such provisions are applicable thereto, and save as expressly provided by such notification.

When such power may be exercised

4. The power conferred by the first clause of section 3 shall be exercisable only when the coins referred to in such notification comply with the following conditions (that is to say)—

in the case of coins of gold, silver or bronze,

(a) their fineness is identical with that for the time being prescribed by law for coins of the ²[Central Government] of the same metal,

in the case of coins whether of gold, silver, bronze or copper,

(b) they are identical in weight with some coins of the ²[Central Government] of the same metal, which may for the time being be legally coined at any Mint of the ²[Central Government], or bear such relation thereto as is approved by the ³[Central Government],

(c) the devices upon their obverse and reverse differ from the devices on coins now made or issued by any such ⁴[Indian State], and have been approved by the ³[Central Government],

(d) upon each of such coins its value in money of the ²[Central Government] is inscribed in the English language,

(e) the ⁴[Indian State] for which they are coined has undertaken to abstain during a term of not less than thirty years from the date of the notification, from coining in its own Mint gold silver, bronze, or copper, as the case may be, and has also undertaken that no coins resembling coins for the time being a legal tender in British India shall, after the expiration of the said term, be struck under its authority or with its permission at any place within or without its jurisdiction,

¹ See now the Indian Coinage Act 1906 (3 of 1906)

² Subs. by the A. O. for G. of 19

³ Subs. by the A. O. for G. G. in C.

⁴ Subs. by the A. O. for Native State.

(f) such State has formerly declared that a tender of payment of money, if made in coins of the ¹[Central Government] of the same metal, shall, in the territories subject to such State, be a legal tender in the cases in which payment made in such coins would under the law for the time being in force, be a legal tender in British India,

(g) such State has also agreed that the law and rules for the time being in force respecting the cutting and breaking of coin of the ¹[Central Government] reduced in weight by reasonable wearing or otherwise, or counterfeit, or called in by proclamation, shall apply to the coins made for such State under this Act, and that it will defray the cost of cutting and breaking them, and

(h) such State has also agreed not to issue the same coins below their nominal value, and not to allow any discount or other advantage to any person in order to bring them into circulation

5 It shall be lawful for any such State to send to any Mint in Indian British India metal to be made into coin under this Act and, subject ^{States authorized to send metal to British India or else} to the Mint Rules for the time being in force and to the provisions hereinafter contained the Mint master shall receive such metal and convert it into coin, provided that it be fit for coinage

Nothing herein contained shall be deemed to entitle any such State to have coins made under this Act at any Mint of the ¹[Central Government] of any metal which is not for the time being legally used at such Mint

6 The ²[Central Government] may impose on any metal ^{sent to the Mint for coinage under this Act} a Mint for coinage under this Act the duty (if any) leviable ^{on the same metal under the Indian Coinage Act 1870} and also a ^{sum} sufficient to defray the expenses of coinage over and above the ^{of issuing and refining} and the Mint master shall coin ^{the charge so imposed}

7. The ²[Central Government] may, from time to time ^{in accordance to the reasonable requirements of the population of the State}, fix the maximum number of any coins of any ^{that shall be coined under this Act}

¹ Subs by the A O for G of I

² Subs by the A O for G G in C

³ See now the Indian Coinage Act 1906 (3 of 1906)

⁴ Subs by the A O for Native State

THE BOMBAY REVENUE JURISDICTION ACT, 1876.

ACT No. X or 1876.¹

[28th March, 1876.]

An Act to limit the jurisdiction of the Civil Courts throughout the Bombay Presidency in matters relating to the Land-revenue, and for other purposes.

Preamble

WHEREAS in certain parts of the Presidency of Bombay the jurisdiction of the Civil Courts in matters connected with the land revenue is more extensive than it is in the rest of the said Presidency;

and whereas it is expedient that the jurisdiction of all the Civil Courts in the said Presidency should be limited in manner hereinafter appearing;

and whereas it is also expedient to amend the Bombay Civil Courts Act, section 32, and to *revive certain provisions of the thirteenth section of Regulation XVII of 1827 of the Bombay Code, which was repealed by the Land Improvement Act, 1871* * * * * *; XX 18

It is hereby enacted as follows:—

Short title

1. This Act may be called the Bombay Revenue Jurisdiction Act, 1876

Commencement.

So much of section 4 as relates to claims to set aside, on the ground of irregularity, mistake or any other ground except fraud, sales for arrears of land-revenue, shall come into force on such day as the Governor General in Council directs in that behalf by notification in the Gazette of India. The rest of this Act shall come into force on the passing thereof:

¹ For Statement of Objects and Reasons, see Gazette of India, 1873, Pt V, p 534, for Preliminary Report of the Select Committee, see *ibid*, 1874, Pt V, p 70, for further Report of the Select Committee, see *ibid*, 1875, Pt V, p 210, and for Proceedings in Council, see *ibid*, 1875, Supplement, p 4, and *ibid*, 1876, Supplement, pp 344 and 405

² S 17 of this Act which revived s 13 of Bom Reg 17 of 1827 was rep by the Bombay Revenue Jurisdiction Act 1880 (15 of 1880), except in scheduled districts to which the Bombay Land Revenue Code, 1879 (Bom 5 of 1879), has not been extended, see s 2 of Act 15 of 1880

³ The words "and to provide for the recovery by the Local Government of advances made for purposes other than those specified in section three of the Land Improvement Act, 1871" were rep by the Repealing and Amending Act, 1894 (4 of 1894)

⁴ The 19th September, 1831—see notification No 197, dated 18th March, 1831, in Gazette of India, 1831, Pt I, p 92

and it shall extend to all the territories ¹* * * under the gov Extent
ernment of the Governor of Bombay in Council, but not so as to
affect—

(a) any suit regarding the assessment of revenue on land situate
in the collectorate of Bombay, or the collection of such
revenue,

(b) any of the provisions of ²Bombay Acts V of 1862 and VI of
1862, or of ³[Act XXI of 1881] or of Act XXIII of 1871,

4* * * * * *

2 [Repeal of enactments] Rep by the Amending Act, 1891 (XII
of 1891)

3 In this Act, unless there be something repugnant in the subject Interpretation
or context,— clause.

'land' includes the sites of villages, towns and cities it also in-
cludes trees, growing crops and grass, fruit upon, and juice in, trees,
rights-of way, ferries, fisheries and all other benefits to arise out of
land, and things attached to the earth or permanently fastened to
things attached to the earth

'land revenue' means all sums and payments, in money or in kind,
received or claimable by or on behalf ⁵[of the Crown] from any person
on account of any land held by or vested in him, and any cess or rate
authorized ⁶[by the Provincial Government] under the provisions of
any law for the time being in force

Revenue officer' means any officer employed in or about the
business of the land revenue, or of the surveys, assessment, accounts
or records connected therewith

4 Subject to the exceptions hereinafter appearing, no Civil Court Bar of
shall exercise jurisdiction as to any of the following matters certain suits.

(a) ⁷[claims against the Crown] relating to any property apper-
taining to the office of any hereditary officer appointed or
recognised under ⁸Bombay Act No III of 1874 or any
other law for the time being in force, or of any other
village officer or servant, or

¹The words for the time being rep by the A O

²The names of the Acts are respectively, the Bhagdari and Narvadari Act, 1862, the Ahmedabad Taluqdars Act 1862, the Broach and Haura Incumbered Estates Act 1881 and the Pensions Act, 1871

³Subs for Act XV of 1871 by the Amending Act, 1891 (12 of 1891)

⁴Cl (c) rep by the Repealing and Amending Act 1895 (16 of 1895)

⁵Subs by the A O for of Govt

⁶Subs by the A O for by Govt

⁷Subs by the A O for claims against Govt "

⁸The Bombay Hereditary Offices Act.

claims to perform the duties of any such officer or servant, or in respect of any injury caused by exclusion from such office or service, or

suits to set aside or void any order under the same Act or any other law relating to the same subject for the time being in force passed ¹[by the Provincial Government] or any officer duly authorized in that behalf, or

²[claims against the Crown] relating to lands held under treaty, or to lands granted or held as saranjam, or on other political tenure, or to lands declared ¹[by the Provincial Government] or any officer duly authorized in that behalf to be held for service,

(b) objections—

to the amount or incidence of any assessment of land-revenue authorized ¹[by the Provincial Government] or

to the mode of assessment or to the principle on which such assessment is fixed or

to the validity or effect of the notification of survey or settlement or of any notification determining the period of settlement

(c) claims connected with or arising out of any proceedings for the realization of land revenue or the rendering of assistance ¹[by the Provincial Government] or any officer duly authorized in that behalf to superior holders or occupants for the recovery of their dues from inferior holders or tenants,

claims to set aside, on account of irregularity, mistake or any other ground except fraud, sales for arrears of land revenue,

(d) ²[claims against the Crown]—

(1) to be entered in the revenue survey or settlement records or village papers as liable for the land revenue, or as superior holder, inferior holder, occupant or tenant, or

(2) to have any entry made in any record of a revenue survey or settlement, or

(3) to have any such entry either omitted or amended,

(e) the distribution of land or allotment of land revenue on partition of any estate under ³Bombay Act IV of 1868 or any other law for the time being in force.

¹ Subs by the A O for by Govt

² Subs by the A O for claims against Govt

³ Bom Act 4 of 1868 rep by the Bombay Land Revenue Code 1879 (Bom 5 of 1879) in areas in which the latter Act is in force

(f) ¹[claims against the Crown]—

to hold land wholly or partially free from payment of land-revenue or to receive payments charged on or payable out of the land-revenue, or to set aside any cess or rate authorized ²[by the Provincial Government] under the provisions of any law for the time being in force, or

respecting the occupation of waste or vacant land belonging ³[to the Crown],

- (g) claims regarding boundaries fixed under ⁴Bombay Act No I of 1865, or any other law for the time being in force or to set aside any order passed by a competent officer under any such law with regard to boundary marks

Provided that, if any person claim to hold wholly or partially Provide
exempt from payment of land revenue under—

- (h) any enactment for the time being in force expressly creating an exemption not before existing in favour of an individual or of any class of persons, or expressly confirming such an exemption on the ground of its being shown in a public record, or of its having existed for a specified term of years, or

- (i) an instrument or sanad given by or by order of the ⁵[Provincial Government] under ⁶Bombay Act No II of 1863, section 1, clause first, or ⁷Bombay Act No VII of 1863, section 2, clause first, or

- (j) any other written grant by the British Government expressly creating or confirming such exemption, or

- (k) a judgment by a Court of law, or an adjudication duly passed by a competent officer under ⁴Bombay Regulation XVII of 1827, Chapter X, or under ⁸Act No VI of 1852, which declares the particular property in dispute to be exempt,

such claim shall be cognizable in the Civil Courts

¹Subs by the A O for 'claims against Govt'

²Subs by the A O for 'by Govt'

³Subs by the A O for 'to Govt'

⁴Bom Act 1 of 1865 (except s. 37), and Bom Reg 17 of 1827 are rep by the Bombay Land revenue Code, 1879 (Bom 5 of 1879), in areas in which the latter Act is in force

⁵Subs by the A O for "Governor of Bombay in Council".

⁶The Exemptions from Land revenue (No I) Act, 1863

⁷The Exemptions from Land revenue (No II) Act, 1863

⁸The Bombay Rent free Estates Act, 1852

Illustrations to (A)

(1) It is enacted that, in the event of the proprietary right in lands, the property or Government, being transferred to individuals they shall be permitted to hold the lands for ever at the assessment at which they are transferred. The proprietary right in certain lands is transferred to A at an assessment of Rs 100. An exemption from higher assessment not before existing is expressly created in favour of A by enactment, and he may seek relief in the Civil Court against over-assessment.

(2) It is enacted that, when a specific limit to assessment has been established and preserved the assessment shall not exceed such specific limit. A is the owner of land worth Rs 100 for assessment. He claims to be assessed at Rs 50 only on the strength of a course of dealing with him and his predecessors under which his land has not been more highly assessed. There is no exemption not before existing created by enactment, and A's claim is not cognizable in a Civil Court.

(3) It is enacted that land revenue shall not be leviable from any land held and entered in the land registers as exempt. A claims to hold certain land as exempt on the ground that it has been so held by him and is so entered in the land register. This is an exemption expressly confirmed by enactment on the ground of its being shown in a public record, and A's claim is cognizable in a Civil Court.

(4) It is enacted that the Collector shall confirm existing exemptions of all lands shown in certain maps to be exempt. A claims exemption alleging that his land is shown in the maps to be exempt. A's claim is cognizable in a Civil Court.

(5) It is enacted that assessment shall be fixed with reference to certain considerations and not with reference to others. This is not an enactment creating an exemption in favour of any individual or class and no objection to an assessment under such an enactment is cognizable in a Civil Court.

Saving of
certain suits

5. Nothing in section 4 shall be held to prevent the Civil Courts from entertaining the following suits

(a) suits ¹[against the Crown] to contest the amount claimed, or paid under protest, or recovered, as land-revenue, on the ground that such amount is in excess of the amount authorized in that behalf ²[by the Provincial Government], or that such amount had, previous to such claim, payment or recovery been satisfied, in whole or in part, or that the plaintiff, or the person whom he represents, is not the person liable for such amount,

(b) suits between private parties for the purpose of establishing any private right, although it may be affected by any entry in any record of revenue-survey or settlement or in any village papers;

(c) suits between superior holders or occupants and inferior holders or tenants regarding the dues claimed or recovered from the latter,

and nothing in section 4, clause (g), shall be held to prevent the Civil Courts from entertaining suits, other than suits ¹[against the Crown], for possession of any land being a whole survey-number or a recognized share of a survey-number,

³[and nothing in section 4 shall be held to prevent the Civil Courts in the districts mentioned in the Second Schedule hereto annexed from

¹ Subs by the A O for 'against Govt

² Subs by the A O for 'by Govt'

³ Ins by the Bombay Revenue Jurisdiction (Amendment) Act, 1877 (16 of 1877)

exercising such jurisdiction as, according to the terms of any law in force on the twenty eighth day of March 1876, they could have exercised over claims ¹[against the Crown]—

- (a) relating to any property appertaining to the office of any hereditary officer appointed or recognized under ²Bombay Act No III of 1874 or any other law for the time being in force, or of any other village officer or servant
- (b) to hold land wholly or partially free from payment of land-revenue
- (c) to receive payments charged on or payable out of, the land-revenue]

6. Revenue-officers shall not be liable to be sued for damages in any Civil Court for any act *bonâ fide* done or ordered to be done by them as such in pursuance of the provisions of any law for the time being in force Bar of certain suits against Revenue officers

If any Revenue-officer absconds or does not attend when called on by his official superior, and if the Collector of the district proceeds against him or his sureties for public money papers or property according to the provisions of any law for the time being in force such Collector shall not be liable to pay damages or costs in any suit brought against him by such officer or sureties although it appears that a part only, or no part whatever, of the sum demanded was due from the officer so absconding or failing to attend, or that he was not in possession of the papers or property demanded of him

7. Nothing in any law for the time being in force which authorizes the punishment departmentally of any Revenue-officer for any offence or breach of duty, or which sanctions his prosecution criminally for such offence or breach, shall be held to bar any remedy which may be had in the Civil Court against such officer. Punishment or prosecution of Revenue officers no bar to civil remedies

8 to 10. [Suits against Revenue-officers Appeals from their proceedings Power for Local Government to call for record.] Rep. by the Bombay Revenue Jurisdiction Act, 1880 (XV of 1880).

11 No Civil Court shall entertain any suit ¹[against the Crown] on account of any act or omission of any Revenue-officer unless the plaintiff first proves that, previously to bringing his suit, he has presented all such appeals allowed by the law for the time being in force as, within the period of limitation allowed for bringing such suit, it was possible to present Suits not to be entertained unless plaintiff has exhausted right of appeal

¹ Substituted by the A O for against Govt *

² The Bombay Hereditary Officers Act

Power of
Government
to refer
questions for
decision of
High Court

12 If, in the trial or investigation of any suit, claim or objection which, but for the passing of this Act might have been tried or investigated by a Civil Court there arises any question on which ¹ * * the ²[Provincial Government] desires to have the decision of the High Court ¹ * * * the ²[Provincial Government] ³* * * may cause a statement of the question to be prepared and may refer such question for the decision of the High Court of Judicature at Bombay

The said High Court shall fix an early day for the hearing of the question referred and cause notice of such day to be placed in the court house

The parties to the case may appear and be heard in the High Court in person or by their advocates or pleaders

The High Court when it has heard and considered the case shall send a copy of its decision with the reasons therefor under the seal of the Court to the Government by which the reference was made, and subject to any appeal which may be presented to Her Majesty in Council the case shall be disposed of conformably to such decision

If the High Court considers that any such statement is imperfectly framed, the High Court may return it for amendment

The costs (if any) consequent on any such reference shall be dealt with as the High Court in each case directs

Power of
Civil Judge
to refer
questions of
jurisdiction
to High
Court

13 If in any suit instituted or in any appeal presented in a Civil Court, the Judge doubts whether he is precluded by this Act from taking cognizance of the suit or appeal he may refer the matter to the High Court

The High Court may order the Judge making the reference either to proceed with the case or to return the plaint

The order of the High Court on any such reference shall be subject to appeal to Her Majesty in Council and save as aforesaid shall be final

Composition
of Bench

14 Every reference under section 12 or section 13 shall be heard by a Bench consisting of such number of Judges not less than three, as the Chief Justice from time to time directs

15 [Amendment of section 32 of Act XIV of 1869] Rep by the Repealing Act, 1938 (1 of 1938) s 2 and Sch

¹ The words the G G in C or rep by the A O

² Subs by the A O for L G

³ The words as the case may be rep by the A O

¹[16 Whenever any suit is brought in any Court of a Subordinate Judge of the first class ²[against the Crown or the Federal Railway Authority] or against any Revenue Officer ³[and the Crown or the Federal Railway Authority undertakes] the defence thereof it shall be lawful ⁴[for the Provincial Government] by certificate signed by a Secretary thereto to require that the trial of any such suit shall have precedence over the trial of any other suit or other civil proceeding then pending in the Court of the first class Subordinate Judge, or, if the suit is transferred in the Court of the District Judge and the Court shall give effect to every such requirement

Privileges
of Govern-
ment in suits
defended
by it

The privilege conferred ⁵[on the Provincial Government] by this section shall, *mutatis mutandis* apply to any appeal or special appeal against any decree in any such suit as is described in this section]

17 [Revival of section 13 of B m Rej XVII of 1827 Operation of Bom Rej XVII of 1827 in sites of villages and towns Recovery of certain advances made by Local Government] Rep by the Bombay Revenue Jurisdiction Act 1880 (XV of 1880) ⁶

SCHEDULE —[Enactments repealed] Rep by the Amending Act, 1891 (XII of 1891)

7[THE SECOND SCHEDULE

The district of Ahmedabad

The district of Kaira exclusive of the Panch Mahals

The district of Broach

The district of Surat, exclusive of the lapsed State of Mandvi, as described in the Schedule annexed to ⁸Act X of 1848

¹ Subs by the Bombay Revenue Jurisdiction (Amendment) Act, 1979 (Bom 21 of 1979) s 2 for the original s 16

² Subs by the A O for against Govt

³ Subs by the A O for and the Govt undertakes

⁴ Subs by the A O for for the Govt

⁵ Subs by the A O for on Govt

⁶ The repeal of the first clause of s 17 does not operate in any Scheduled District unless and until the Bombay Land Revenue Code 1879 (Bom 5 of 1879) has been extended to that district see Act 15 of 1880 s 2.

⁷ Ins by the Bombay Revenue Jurisdiction (Amendment) Act 1877 (16 of 1877) The Schedule is referred to in s 5 *supra*

⁸ Act X of 1848 was rep by the Amending Act 1891 (12 of 1891)

The district of Tanna

The district of Kolába, exclusive of the lapsed State of Kolába mentioned in ¹Act VIII of 1853

The district of Ratnágiri

The district of Kanára]

THE BOMBAY MUNICIPAL DEBENTURES ACT, 1876

ACT No XV of 1876 ²

[14th September, 1876]

An Act to amend the law relating to the transfer of Bombay Municipal Debentures and to provide for their consolidation

Preamble

WHEREAS, under the ³Bombay Municipal Act of 1865, the Justices ^{Bom} of the Peace for the City of Bombay were empowered to mortgage ¹⁸⁶⁵ for the purposes therein mentioned the rates and taxes imposed and levied under that Act,

and whereas, by section 255 of the same Act, it was enacted that any person entitled to any such mortgage might transfer his right and interest therein to any other person, and that every such transfer should be by deed duly stamped, wherein the consideration should be truly stated, and that every such transfer might be according to the form in Schedule K to the said Act annexed or to the like effect

and whereas, in exercise of the said power, diverse mortgages of the said rates and taxes have been made, and the mortgagees have purported to transfer their mortgages to other persons, but such transfers have been by simple endorsement and not by deed duly stamped,

and whereas it is expedient to provide that such transfers may hereafter be made by endorsement, and to confirm the said transfers herebefore made, and to exempt the parties thereto from the penalties which they have incurred by reason of their failure to comply with the provisions of the said section and of the law relating to stamp duties for the time being in force,

and whereas it is also expedient to provide for consolidating such mortgages in manner hereinafter mentioned and for renewing and subdividing mortgages so consolidated,

¹ Act 8 of 1853 was rep. by the Amending Act 1891 (12 of 1891)

² For Statement of Objects and Reasons see Gazette of India, 1876, Pt. V, p. 552 and for Proceedings in Council see *ibid*, Supplement, pp. 714, 753 and 1003

³ See now the City of Bombay Municipal Act 1883 (Bom. 3 of 1883)

It is hereby enacted as follows

1 This Act may be called the Bombay Municipal Debentures Act, short title
1876

2 Every mortgage of rates and taxes authorized to be made under Transfers of
the said Bombay Municipal Act of 1865, or any subsequent Act, debentures
shall be transferable by endorsement on the instrument of mortgage to be by
endorsement
2. * . *

3 Every transfer of any such mortgage heretofore made by en Validation of
dorsement shall be and be deemed to have been as valid as if this Act former
had been in force at the date of such transfer and no stamp duty shall transfers by
be or be deemed to have been chargeable in respect of any such endorsement
transfer and no penalty shall be deemed to have been incurred by
reason of any failure to comply with the provisions of the said section
25 or of the law relating to stamp duties for the time being in
force

4 Any holder of two or more such instruments of mortgage may Power to
surrender them to the Municipal Corporation of the City of Bombay, consolidate
and such Corporation shall accept the same and shall (on receipt for debentures
each such instrument of such fee as the said Corporation may from
time to time prescribe) grant to such holder under the seal of the said
Corporation an instrument of mortgage in which the consideration
stated shall be the aggregate amount of the considerations respectively
stated in the instrument so surrendered

Every instrument so granted may be in the form in the Schedule
hereto annexed or to the like effect

5 The said Corporation shall, on the application of the holder of Power to
any instrument granted under the said Bombay Municipal Act of 1865 renew and
or under this Act and on receipt of such fees as the said Corporation sub-divide
may from time to time prescribe in this behalf renew or sub-divide
the same

THE SCHEDULE ABOVE REFERRED TO

WHEREAS A B of his surrendered to us the Municipal
Corporation of the City of Bombay, mortgages issued
under the Bombay Municipal Act of 1865 bearing respectively the
following number and date (namely) [set them out] and securing
sums amounting in the whole to Rs In consideration of

1 See now the City of Bombay Municipal Act 1883 (Dom 3 of 1883)

2 The words "and no such endorsement shall be chargeable with any stamp-duty,"
rep. by the Indian Stamp Act 1879 (1 of 1879)

Oudh Laws. [1876: Act XVIII.

the premises, we, the said Corporation, do hereby grant and assign unto the said A B, his representatives and assigns, such proportion of the rates and taxes comprised in the said mortgages as the said sum of Rs bears to the whole sum for the time being borrowed upon the credit of the said rates and taxes. TO HOLD to the said A B, his representatives and assigns, from this day, until the said sum of Rs. with interest at the rate of per cent per annum shall be fully paid and satisfied

Given under our corporate seal this day of 187 .

THE OUDH LAWS ACT, 1876

CONTENTS

PREAMBLE.

PART I.

PRELIMINARY

SECTIONS.

- 1 Short title.
Local extent
Commencement.
2. [*Repealed.*]

PART II.

GENERAL LAWS TO BE ADMINISTERED IN OUDH.

3. Statutory law to be administered in Oudh
4. Validity of local customs and mercantile usages

PART III.

CHAPTER I.

DOWER AMONG MUHAMMADANS

- 5 Muhammadan dower-contracts how to be enforced.
Rule applicable after husband's death

CHAPTER II

PRE EMPTION

SECTIONS

- 6 Right of pre emption
 - 7 Presumption as to its existence
 - 8 Its existence in towns to be proved
 - 9 Devolution of right when property to be sold or forelosed s
a proprietary or under proprietary tenure
 - 10 Notice to pre emptors
 - 11 Loss of right of pre emption
 - 12 Right of pre emptor on foreclosure
 - 13 Suit to enforce right of pre emption
 - 14 Decree to fix time for payment
 - 15 Effect of non payment of purchase money
-

CHAPTER III

PROCEDURE OF THE COURTS

- 16 Rule of limitation
 - 17 and 18 [*Repealed*]
 - 19 Rules for taking evidence
 - 20 Execution sale of ancestral and acquired property in land
 - 21 [*Repealed*]
 - 22 Service of process within jurisdiction of Lucknow Civil Court
 - 23 to 25 [*Repealed*]
 - 26 Revenue agents authorized to appear etc in rent suits
 - 27 Power to make rules for custody and sale of attached property
 - 28 [*Repealed*]
-

CHAPTER IV

VILLAGE AND ROAD POLICE

- 29 Right to nominate village policemen
- 30 Obligation to nominate
- 31 Discretion to appoint or reject nominee

SECTIONS

- 32 Power to Government to appoint
Procedure in case of rejection of nominee
- 33 Appointment of road police
- 34 Duties of village and road policemen
- 35 Procedure on arrest by village or road policeman
- 36 Dismissal of village or road policeman
- 37 Acts punishable
Penalty
- 38 Fines to be credited to such fund as Government appoints

 CHAPTER V

SUBSIDIARY RULES

- 39 Power to make rules
- 40 Publication of rules
- 41 [*Repealed*]
- 42 Penalty for breach of rules

 CHAPTER VI

MISCELLANEOUS

Honorary Civil Jurisdiction

- 43 [*Repealed*]

Honorary Police officers

- 44 Honorary Police officers

Creation and Alteration of Districts and Sub divisions

- 45 [*Repealed*]

 THE FIRST SCHEDULE [*Repealed*]

THE SECOND SCHEDULE

(Part I—Preliminary, Part II—General Laws to be administered in Oudh)

ACT No XVIII OF 1876 ¹

[10th October, 1876]

An Act to declare and amend the laws to be administered in Oudh

WHEREAS it is expedient to declare and amend the laws to be administered in Oudh, It is hereby enacted as follows — Preamble

PART I.

PRELIMINARY

1 This Act may be called the Oudh Laws Act 1876 Short title

It extends only to 2* * * Oudh Local extent.

and it shall come into force on the passing thereof

2 [Repeal of enactments] Rep by the Repealing Act, 1938 (I of 1938) s 2 and Sch Commencement

PART II.

GENERAL LAWS TO BE ADMINISTERED IN OUDH

33 The law to be administered by the Courts of Oudh shall be as follows — Statutory law to be administered in Oudh

(a) the laws for the time being in force regulating the assessment and collection of land revenue

(b) in questions regarding succession special property of females, betrothal marriage divorce, dower, adoption, guardianship, minority, bastardy, family relations, wills,

¹ For Statement of Objects and Reasons see Gazette of India 1873 Pt V, p 493, for Report of the Select Committee see *ibid* 1876 Pt V, p 710 and for Proceedings in Council see *ibid* 1871 Supplement p 1007 *ibid* 1873 Extra Supplement p 1, *ibid*, 1876 Supplement pp 521 1055 and 1097

² The words the territories for the time being administered by the Chief Commissioner of rep by the A O

³ The provisions of this section have been rep in so far as they are inconsistent with the Muslim Personal Law (Shariat) Application Act 1937 (26 of 1937) see s 6 of that Act

(Part II—General Laws to be administered in Oudh)

legacies, gifts, partitions, or any religious usage or institution, the rule of decision shall be—

- (1) any custom applicable to the parties concerned which is not contrary to justice, equity or good conscience, and has not been, by this or any other enactment altered or abolished, and has not been declared to be void by any competent authority,
- (2) the Muhammadan law in cases where the parties are Muhammadans, and the Hindu law in cases where the parties are Hindus, except in so far as such law has been, by this or any other enactment, altered or abolished or has been modified by any such custom as is above referred to
- (c) the rules contained in this Act
- (d) the rules published in the ¹[Official Gazette] as provided by section 40 or made under any other Act for the time being in force in Oudh
- (e) the Regulations and Acts specified in the second schedule hereto annexed, subject to the provisions of section 4, and to the modifications mentioned in the third column of the same schedule
- (f) subject to the modifications hereinafter mentioned, all enactments for the time being in force and expressly or by necessary implication applying to British India or Oudh, or some part of Oudh
- (g) in cases not provided for by the former part of this section, or by any other law for the time being in force the Courts shall act according to justice, equity and good conscience

Validity of
local customs
and mercan-
tile usages

4 All local customs and mercantile usages shall be regarded as valid, unless they are contrary to justice, equity or good conscience, or have, before the passing of this Act been declared to be void by any competent authority

¹ Subs. by the A. O. for local official Gazette

(Part III Chapter I—Dower among Muhammadans Chapter II—
Pre-emption)

PART III.

CHAPTER I

DOWER AMONG MUHAMMADANS

5 Where the amount of dower stipulated for in any contract of Muhammadan dower by a Muhammadan is excessive with reference to the means of the husband, the entire sum provided in the contract shall not be awarded in any suit by decree in favour of the plaintiff or by allowing it by way of set off lien or otherwise to the defendant but the amount of the dower to be allowed by the Court shall be reasonable with reference to the means of the husband and the status of the wife

This rule shall be applicable whether the suit to enforce the contract be brought in the husband's life time or after his death

Rule applicable after husband's death

CHAPTER II

PRE-EMPTION

6. The right of pre-emption is a right of the persons hereinafter mentioned or referred to to acquire in the cases hereinafter specified, immovable property in preference to all other persons

Right of pre-emption

7. Unless the existence of any custom or contract to the contrary is proved, such right shall whether recorded in the settlement record or not, be presumed—

Presumption as to its existence

(a) to exist in all village communities however constituted and whether proprietary or under proprietary and in the cases referred to in section 40 of the Oudh Land revenue Act¹ and

(b) to extend to the village site to the houses built upon it, to all lands and shares of lands within the village boundary, and to all transferable rights affecting such lands

8 The right of pre-emption shall not be presumed to exist in any town or city or any subdivision thereof but may be shown to exist therein and to be exercisable therein by such persons and under such circumstances as the local custom prescribes

Its existence in towns to be proved

9 If the property to be sold or foreclosed is a proprietary or under-proprietary tenure, or a share of such a tenure, the right to buy or

Devolution of right when property to

¹ See now the U P Land Revenue Act 1901 (U P 3 of 1901)

(Part III Chapter II —Pre emption)

be sold or
foreclosed is
a proprietary
or under
proprietary
tenure

redeem such property belongs, in the absence of a custom to the contrary,—

- 1st, to co sharers of the sub division (if any) of the tenure in which the property is comprised, in order of their relationship to the vendor or mortgagor,
- 2ndly, to co sharers of the whole mahal in the same order,
- 3rdly, to any member of the village community, and
- 4thly if the property be an under proprietary tenure to the proprietor

Where two or more persons are equally entitled to such right, the person to exercise the same shall be determined by lot

Notice to
pre emptors

10 When any person proposes to sell any property, or when he forecloses a mortgage upon any property, in respect of which any persons have a right of pre emption, he shall give notice to the persons concerned of the price at which he is willing to sell such property, or of the amount due in respect of such mortgage, as the case may be

Such notice shall be given through the Court within the local limits of whose jurisdiction the property or any part thereof is situate, and shall be deemed sufficiently given if it be stuck up on the chaupal or other public place of the village or city in which the property is situate

Loss of right
of pre-emp-
tion

11 Any person having a right of pre emption in respect of any property proposed to be sold shall lose such right, unless within three months from the date of such notice he or his agent pays or tenders the price aforesaid to the person so proposing to sell

Right of pre
emptor on
foreclosure

12 When the right of pre emption arises in respect of the foreclosure of a mortgage, any person entitled to such right may, at any time within three months after the giving of the notice required by section 10, pay or tender to the mortgagee or his successor in title the amount specified in such notice, and shall thereupon acquire a right to purchase the property

On completion of the purchase the person exercising the right of pre emption shall be bound to pay to the mortgagee or his successor in title the amount specified in such notice, together with interest on the principal sum secured by the mortgage, at the rate specified by the instrument of mortgage, for any time which has elapsed since the date of the notice, and any additional costs which may have been properly incurred by the mortgagee or his successor in title

(Part III Chapter II —Pre-emption Chapter III —Procedure of the Courts)

13 Any person entitled to a right of pre-emption may bring a suit to enforce such right on any of the following grounds (namely) — Suit to enforce right of pre-emption

- (a) that no due notice was given as required by section 10
- (b) that tender was made under section 11 or section 12 and refused
- (c) in the case of a sale that the price stated in the notice was not fixed in good faith
- (d) in the case of a mortgage that the amount claimed by the mortgagee was not really due on the footing of the mortgage and was not claimed in good faith and that it exceeds the fair market value of the property mortgaged

If, in the case of a sale the Court finds that the price was not fixed in good faith, the Court shall fix such price as appears to it to be the fair market value of the property sold

If, in the case of a mortgage the Court finds that the amount claimed by the mortgagee was not really due on the footing of the mortgage and that it was not claimed in good faith and that it exceeds the fair market value of the property mortgaged the amount to be paid to the mortgagee shall not exceed what the Court finds to be such market value

14 If the Court find for the plaintiff the decree shall specify a day on or before which the purchase money or the amount to be paid to the mortgagee shall be paid Decree to fix time for payment

15 If such purchase money or amount is not paid into Court before it rises on that day the decree shall become void and the plaintiff shall so far only as relates to such sale or mortgage lose his right of pre-emption over the property to which the decree relates Effect of non payment of purchase-money

CHAPTER III

PROCEDURE OF THE COURTS

16 The Judicial Commissioner's Circular No 104 of July 1860 shall be held to have been a notification within the meaning of section 24 of Act XIV of 1859,¹ and such Act shall be deemed to have been in force in Oudh from the fourth day of July 1862, and all orders and decrees passed under the rules contained in the said Circular or under the said Act, shall be deemed to have been passed under a law in force for the time being Rule of limitation.

¹ See now the Limitation Act, 1908 (9 of 1908)

(Part III Chapter III—Procedure of the Courts)

Nothing in this section affects the provisions of sections 102, 104, 105 106, 107 and 108 of the Oudh Rent Act (XIX of 1868)¹ with regard to the limitation of suits under that Act

17 [Act XXXII of 1871 s 28 to cease in any district from date of notification that it is no longer under settlement] Rep by the Amending Act, 1891 (XII of 1891)

18 [Recognized agents] Rep by the Amending Act 1891 (XII of 1891)

Rules for
taking
evidence

19 2Section 172 of Act No VIII of 1859 is hereby repealed so far as the province of Oudh is concerned, and the following section is substituted therefor —

‘ On the day appointed for the hearing of the suit or on some other day to which the hearing may be adjourned the evidence of the witnesses in attendance shall be taken orally in open Court in the presence and hearing and under the personal direction and superintendence of the Judge

“A note of the essential points of the evidence of each witness is to be taken at the time and in the course of oral examination, by the officer who tries the case in his own language or in English if he is sufficiently acquainted with that language, and such note shall be filed and shall form part of the record of the case

‘ If the evidence be taken down in a different language from that in which it has been given, and the witness does not understand the language in which it is taken down the witness may require his deposition as taken down to be interpreted to him in the language in which it was given

It shall be in the discretion of the Court to take down, or cause to be taken down, any particular question and answer, if there appear any special reason for so doing or any party or his pleader requires it

‘ If any question put to a witness be objected to by either of the parties or their pleaders and the Court allow the same to be put, the question and the answer shall be taken down, and the objection and the name of the party making it shall be noticed in taking down the deposition^a, together with the decision of the Court upon the objection

¹ Act 19 of 1868 was rep by the Oudh Rent Act 1886 (22 of 1886) s 2

² See now ss 181 to 190 both inclusive of the Code of Civil Procedure 1908 (5 of 1908)

(Part III Chapter III—Procedure of the Courts)

"The Court shall record such remarks as it may think material respecting the demeanour of the witness while under examination

"If the Judge be prevented from making a note as above required he shall record the reason of his inability to do so and shall cause such note to be made in writing from his dictation in open Court and shall sign the same and such note shall form part of the record

¹[20 So much of section 60 of the Code of Civil Procedure 1908 as renders land liable to sale in execution of a decree shall be subject to the following restriction —No ancestral land shall be sold in satisfaction of a decree without the permission of the ²[Provincial Government]

Execution sale of ancestral and acquired property in land

Explanation —In this section the words ancestral land mean—

- (a) land forming a mahal or share in or portion of a mahal which has been owned continuously from the conclusion of the first regular settlement by the proprietor which term shall include an under proprietor as defined in section 4 clause (15) of the United Provinces Land Revenue Act 1901 or by the person or persons from whom such proprietor has directly or indirectly inherited such land
- (b) land forming an estate or part of an estate as defined in the Oudh Estates Act 1869
- (c) land conferred by the British Government as a reward for services rendered to the State on the owner or on a person from whom such owner has directly or indirectly inherited such land, or
- (d) the interest of the holder of a grant of land revenue conferred by the British or any former Government on him or on a person from whom he has directly or indirectly inherited such interest]

21 [Appointment of manager of land attached] Rep by the Oudh Civil Courts Act, 1879 (XIII of 1879)

22 Notwithstanding anything contained in the said Code, any Civil Court sitting within the local limits of the jurisdiction of the Lucknow Civil Court, but exercising jurisdiction beyond such limits, may cause summonses, warrants, notices and other processes to be

Service of process with jurisdiction of Lucknow Civil Court.

¹ Subs by s 2 of the Oudh Laws (Amendment) Act, 1912 (U P 3 of 1912) for original section

² Subs by the A O for Lieutenant-Governor

(Part III Chapter III—Procedure of the Courts)

served within the local limits of the jurisdiction of the Lucknow Civil Court without causing the same processes to be served through such Court

23 [Section substituted for Act XIX of 1868, s 109] Rep by the Oudh Rent Act, 1886 (XXII of 1886).

24. [Section substituted for Act XIX of 1868, s 118] Rep by the Oudh Rent Act, 1886 (XXII of 1886)

25. [Right of occupancy in judgment debtor's sir land] Rep by the Oudh Rent Act, 1886, Amendment Act, 1901 (U P. IV of 1901).

Revenue Agents authorized to appear, &c., in rent suits

26. Notwithstanding anything contained in Act No XX of 1865¹, all persons duly admitted and enrolled as Revenue agents under that Act in 2* * * Oudh may appear, plead and act in suits under the Oudh Rent Act³ in the Courts of officers exercising the powers of Assistant Collectors, Deputy Collectors, Collectors and Commissioners XIX 1868 under the same Act

Power to make rules for custody and sale of attached property

27. With the sanction of the ⁴[Provincial Government], the ⁵[Chief Court] may from time to time make rules consistent with this Act and with the Code of Civil Procedure⁶—

(a) for the custody and sale of moveable property attached in execution of decrees,

(b) for the levy of a fee or commission on the sale of attached property and the disposal of the funds accruing from such fees,

(c) as to the appointment and remuneration of persons ⁷[(not being persons in the service of the Crown)] by whom property is to be attached, kept in custody and sold,

(d) as to the appointment and remuneration of persons ⁷[(not being persons in the service of the Crown)] by whom local investigations under section 180, and investigations and adjustments of accounts under section 181, of the Code of Civil Procedure⁸ are to be made

28 [Power to revise decrees and orders of subordinate Courts] Rep by the Oudh Civil Courts Act 1879 (XIII of 1879)

¹ See now the Legal Practitioners Act, 1879 (18 of 1879)

² The words the territories for the time being under the administration of the Chief Commissioner of rep by the A O

³ See now the Oudh Rent Act 1886 (22 of 1886)

⁴ Subs by the A O for Chief Commissioner

⁵ Subs by the Oudh Courts Act 1925 (U P 4 of 1925) s 49 and Sch I, for Judicial Commissioner

⁶ See now the Code of Civil Procedure, 1908 (5 of 1908)

⁷ Ins by the A O

⁸ See now the Code of Civil Procedure, 1908 (5 of 1908), Sch I, Order XVI, rules 9 to 12

(Part III Chapter II — Village and Road Police)

CHAPTER IV

VILLAGE AND ROAD POLICE

29 The nomination to the post of village policeman shall be made by the zamindar of the village or, where there are more zamindars than one by the zamindar as their representative and where there are more zamindars than one, the opinion of the majority (unless there is some special provision to the contrary in the village administration paper) shall prevail

Right to
nominate
village-
policemen

30. Every person authorized to nominate to the office of village policeman shall within fifteen days after the occurrence of a vacancy in such office, nominate a proper person to the vacant post, and communicate the nomination to the Magistrate of the district

Obligation to
nominate

31. The person so nominated shall, after due enquiry into his age character and ability, be appointed or rejected ¹[by the Provincial Government]

Discretion to
appoint or
reject nomi-
nee

32 In default of such nomination within the said fifteen days the ²[Provincial Government] shall appoint such person as ³[it] thinks fit to the vacancy

Power to
Government
to appoint

If the nomination has been made within the said fifteen days but the nominee is rejected, the person authorized to nominate shall, within fifteen days from the date of such rejection, nominate another person to the vacant post, and in default of such nomination, or if such nomination has been made but the nominee is again rejected the ²[Provincial Government] shall appoint such person as ³[it] thinks fit to the vacancy

Procedure in
case of re-
jection of
nominee

33 Subject to the rules to be framed under section 39 and for the time being in force, the ²[Provincial Government] may from time to time appoint persons to be ⁴[road police]

Appointment
of road
police

34 Every village policeman and every road policeman shall perform the following duties —

Duties of
village and
road police-
men.

(a) he shall give immediate information to the officer in charge of the police station appointed for his village or beat—

(1) of every unnatural, suspicious or sudden death occurring in the village of which he is chaukidar or within his beat,

¹ Subs. by the A. O. for at discretion by such Magistrate or by some officer authorized by him in that behalf

² Subs. by the A. O. for Magistrate of the district

³ Subs. by the A. O. for 'he

⁴ Subs. by the A. O. for 'the road police of his district'

(Part III Chapter IV—Village and Road Police)

(2) of each of the following offences occurring in such village or on such beat (that is to say), murder, culpable homicide, rape, dacoity theft robbery, mischief by fire, house breaking, counterfeiting coin causing grievous hurt, riot, harbouring a proclaimed offender exposure of a child concealment of birth administering stupefying drugs kidnapping, lurking house trespass and

(3) of all attempts and preparations to commit and abetments of, any of the said offences

(b) he shall keep the police informed of all disputes which are likely to lead to any riot or serious affray

(c) he shall arrest all proclaimed offenders and all persons whom he may find in the act of committing any offence specified in paragraph (a), clause (2) of this section

(d) he shall observe and from time to time report to the officer in charge of the police station within the jurisdiction of which his village or beat may be situate the movements of all bad characters in or on such village or beat

(e) he shall report to the officer in charge of such police station the arrival of suspicious characters in the neighbourhood

(f) he shall supply to the best of his ability any local information which a Magistrate or any officer of police may require and shall promptly execute all orders issued to him by competent authority

Procedure on arrest by village or road police man

35 Whenever a village policeman or road policeman arrests any person, he shall take him as soon as possible to the police station within the jurisdiction of which his village or beat is situate

Dismissal of village or road police man

36 The Magistrate of the district may dismiss any village policeman or road policeman for any misconduct or neglect of duty

Where any village policeman is guilty of neglect of duty or other misconduct, the person authorized to nominate to his office may report him for dismissal to the Magistrate of the district and such Magistrate shall dismiss him accordingly unless the Magistrate has reason to think that such dismissal would be improper

Acts punishable

37 Every village policeman and road policeman guilty of any wilful misconduct in his office, or of neglect of duty such misconduct or neglect not being an offence within the meaning of the Indian Penal Code,

(Part III Chapter IV—Village and Road Police Chapter V.—
Subsidiary Rules)

or withdrawing from the duties of his office without permission and without having given at least two months notice of his intention to withdraw from such duties to the persons authorized to nominate or appoint under sections 29, 32 and 33 (as the case may be),

or offering any unnecessary personal violence to any person in his custody,

shall be liable, on conviction before a Magistrate, to a penalty not exceeding three months' pay or to imprisonment for a period not exceeding three months, or to both

38. All fines levied under this Act on village-policemen or road-policemen shall be credited to such fund as the ¹[Provincial Government] from time to time appoints

Fines to be credited to such fund as Government appoints

CHAPTER V

SUBSIDIARY RULES

39. The ²[Provincial Government] may, from time to time, ³make rules consistent with this Act as to—

Power to make rules

(a) the discipline and remuneration of the village and road police and the regulation of their number, location and duties,

(b) the disposal of unclaimed property under Act No V of 1861 (*for the regulation of Police*) sections 25 26 and 27

(c) public health and conservancy at fairs and other large public assemblies and the maintenance of a proper watch and ward at such fairs and assemblies,

(d) ⁴imposing ⁵taxes for those purposes only,

⁶[(e) the keeping and custody of civil, criminal and revenue records]

¹ Subs by the A O for 'L. G'

² Subs by the A O for 'Chief Commissioner'

³ The words "with the previous sanction of the G G in C" rep by the U P Assimilation of Powers Act (14 of 1878) s 5

⁴ For rules for the realization of the Chaukidari cess and payment of village watchmen, see U P Local Rules and Orders

⁵ The words 'with the previous sanction of the G G in C' rep by the A O

⁶ Subs by the A O for the criminal (e)

(Part III Chapter V—Subsidiary Rules Chapter II—Miscellaneous)

1* * * * *

Publication
of rules

40 All rules made by the ²[Provincial Government] under section 39 and all rules made by the ³[Chief Court] under section 27, shall be published in the ⁴[Official Gazette] and shall thereupon have the force of law

41 [Continuance of prior rules as to matters for which rules may be made under the Act] Rep by the Amending Act 1891 (XII of 1891)

Penalty for
breach of
rules

42 Whoever breaks any rule made or continued under this Act not being a rule made by the ³[Chief Court], shall on conviction before a Magistrate, be punishable with fine which may extend to fifty rupees or with imprisonment for a term which may extend to six months or with both

CHAPTER VI

MISCELLANEOUS

Honorary Civil Jurisdiction

43 [Power to invest taluqdars with civil jurisdiction] Rep by the Oudh Civil Courts Act 1879 (XIII of 1879)

Honorary Police-officers

Honorary
police-
officers

44 The ²[Provincial Government] may from time to time confer on any person whom ⁵[it] thinks fit any power which may be exercised by a police officer under any Act for the time being in force, and withdraw any power so conferred

Creation and Alteration of Districts and Sub divisions

45 [Power to create new districts Power to form sub divisions of districts] Rep by the United Provinces Act 1890 (XX of 1890), s 35

¹ Cl (f) relating to the appointment & the punishment and dismissal of certain ministerial officers was rep by the A O in view of s 241 (2) (b) of the G of 1 Act 1935 Cl (g) relating to s 25 of the Act was rep by the Oudh Rent Act 1885 Amendment Act 1901 (U P 4 of 1901) The proviso that the previous sanction of the G G in C under cl (d) shall not be necessary in the case of certain taxes was rep by the A O

² Subs by the A O for Chief Commissioner

³ Subs by the Oudh Courts Act 1925 (U P 4 of 1925) s 49 and Sch I for Judicial Commissioner

⁴ Subs by the A O for local official Gazette

⁵ Subs by the A O for he

(The First Schedule. The Second Schedule.)

THE FIRST SCHEDULE.—Rep by the Repealing Act, 1938 (I of 1938), s. 2 and Sch.

THE SECOND SCHEDULE

(See section 3)

PART I.—BENGAL REGULATIONS

Number and year.	Subject	Modifications
XXIII of 1803	Embezzlement by Native Officers	<p>In section 1 and in section 2, clause First, before "sezawals," insert "tahsildars"</p> <p>In section 2, after the first clause, insert</p> <p style="text-align: right;">e e -</p> <p style="text-align: center;">SECTION</p> <p>In section 3, for "Dewanny Adawlut of the Zillah, the Judge of which Court shall detain him" read "District where he shall be detained," for "real or personal," read "moveable or immoveable," * * * * *</p> <p>and omit the words and figures "and the rules in Regulation XXVII, 1803, regarding suits so carried on by the Collectors are to be held applicable to it" * * * *</p> <p>Omit section 8</p>
X of 1804	Punishment by Courts martial of certain State offences	<p>Omit section 1</p> <p>In section 2, for "the British territories subject to the Government of the Presidency of Fort William" read "the territories under the admin- of</p> <p style="text-align: right;">I al"</p>
XI of 1806	Assistance to troops and travellers passing through districts	<p>Omit sections 1, 7, 9 to 20 (both inclusive), and so much of the rest of the Regulation as authorizes Collectors and their Native officers, or Magistrates and their Police-officers, to give their official aid in procuring coolies for the purpose of facilitating the march of troops or the progress of travellers</p> <p>For "Collectors of Revenue" and "Collector" read "Deputy Commissioner" throughout the Regulation</p>

¹ The words "for 'city' read 'jurisdiction'" were rep by the Amending Act 1891 (12 of 1891); and the words "for 'Board of Revenue' read 'Chief Commissioner'" were rep by the United Provinces Act, 1890 (20 of 1890), s. 35

² The words "In section 4, omit the words 'or in either of the cities of Patna, Dacca and Moorshedabid'" were rep by the Amending Act, 1891 (12 of 1891)

(The Second Schedule)

PART I.—BENGAL REGULATIONS—continued.

Number and year	Subject	Modifications
		<p>In sections 2 and 3, for "the Company's territories" read "Oudh".</p> <p>In section 2, omit the last sentence</p> <p>In section 4, clause <i>Third</i>, for "[Central Government]" read "[Provincial Government]".</p> <p>In section 5, omit "the Company's," * * *</p> <p>In section 6, for "Magistrate" read "Deputy Commissioner," and for "on the part of the Collector" read "by the Deputy Commissioner"</p> <p>In section 8, for "the Company's provinces" read "Oudh" * * * * *</p>
<p>***</p> <p>III of 1818</p>	<p>***</p> <p>State Prisoners</p>	<p>* * *</p> <p>In section 1, omit "situated within the territories dependent on the Presidency of Fort William," and from "which are to take effect" to the end of the section</p> <p>In section 2, clause <i>Third</i>, omit "within the territories subject to the Presidency of Fort William"</p> <p>In section 4, omit clause <i>First</i></p> <p>In the same section, clause <i>Second</i>, for "Zillah or City Magistrate" read "Deputy Commissioner," and for "Judge of Circuit" read "Commissioner of Division".</p> <p>In section 9, for "to the Provincial Court of Appeal and Circuit and to the Sudder Dewanny Adawlut and Nizamut Adawlut" read "and to the Judicial Commissioner"</p> <p>Omit section 10</p> <p>* * *</p>
<p>****</p> <p>XI of 1822</p>	<p>***</p> <p>Non liability of Government for errors of a Court of Justice</p>	<p>Omit the whole except section 38</p>

¹ Subs by the A O for 'G G in C'

² Subs by the A O for 'Chief Commissioner'

³ The words 'and for Board of Revenue read "Chief Commissioner"' were rep by the United Provinces Act, 1890 (20 of 1890), s 35

⁴ The words and figures 'and omit the words and figures '(under the rules prescribed by Regulation 5 of 1804' and in Regulation 27 of 1803' were rep by the Amending Act, 1891 (12 of 1891)

⁵ The entry relating to Bengal Regulation 17 of 1806 was rep by the Transfer of Property Act, 1882 (4 of 1882), the entry relating to Bengal Regulation 20 of 1810 by the Cantonments Act, 1889 (13 of 1889), and the entry relating to Bengal Regulation 5 of 1817 by the Indian Treasure trove Act, 1878 (6 of 1878)

⁶ The entry relating to Bengal Regulation 6 of 1819 was rep by the Amending Act, 1891 (12 of 1891)

(The Second Schedule)

PART I—BENGAL REGULATIONS—concluded

Number and year	Subject	Modifications
VI of 1855	Supply of troops on the march	In the preamble <i>omit</i> the last twenty words In section 2 <i>omit</i> in pursuance of section III Regulation XI 1806 and <i>omit</i> sicca In section 4 <i>for</i> Board of Revenue in whose jurisdiction the district may be situate and Board <i>read</i> Commissioner In section 5 <i>omit</i> on the stamped paper prescribed for other appeals to the Revenue Boards and <i>for</i> the proper Board and the Board <i>read</i> the Commissioner
VI of 1855	Alluvion and Divulsion	<i>Omit</i> section 1 In section 3 <i>omit</i> either and or the sea In section 4 clause <i>First omit</i> whether and or of the sea and <i>for</i> the provisions of Regulation II 1819 or In section 5 <i>for</i> Zillah and City Magistrates <i>read</i> Deputy Commissioners
1 * * *	* * *	* * *

PART II—ACTS OF THE GOVERNOR GENERAL IN COUNCIL

1 * * *	* * *	* * *
* XX of 1856	Chaulukdars	In the preamble <i>after</i> Bengal <i>add</i> and the territories under the administration of the Chief Commissioner of Oudh <i>Omit</i> the words of circuit wherever they occur after Commissioner <i>Omit</i> section 40

¹ The entry relating to Bengal Regulation 20 of 1825 was rep. by the Criminal Procedure Code 1882 (10 of 1882)

² The entry relating to Act 19 of 1853 was rep. by the Amendment Act 1903 (1 of 1903)

³ Act 20 of 1856 has been repealed in the U. P. 1 the U. P. Town Areas Act 1914 (U. P. 2 of 1914)

Dramatic Performances

[1876: Act XIX.]

(The Second Schedule)

PART II — ACTS OF THE GOVERNOR GENERAL IN COUNCIL — *concluded.*

Number and year	Subject	Modifications
XIII of 1857	Opium	In the title <i>after</i> "the Presidency of Fort William in Bengal," <i>read</i> "and the territories under the administration of the Chief Commissioner of Oudh". 1* * *
* * * *	* * *	In section 3 <i>omit</i> "being covenanted servants of the Company" * * *
* XXII of 1871	Chaukidars	In section 1, <i>after</i> "Presidency" <i>insert</i> "or territories". In section 3, <i>omit</i> the words "of circuit" <i>Omit</i> section 6

THE DRAMATIC PERFORMANCES ACT, 1876

ACT No XIX of 1876.¹

[16th December 1876.]

An Act for the better control of public dramatic performances.

Preamble

WHEREAS it is expedient to empower the Government to prohibit public dramatic performances which are scandalous, defamatory, seditious or obscene, It is hereby enacted as follows —

Short title

1 This Act may be called the Dramatic Performances Act, 1876

¹ The modification relating to s 2 was rep by the Amending Act, 1891 (12 of 1891)

² The entry relating to the Minors Act, 1858 (40 of 1858), was rep by the Guardians and Wards Act, 1890 (8 of 1890)

³ Act 22 of 1871 was rep in the U I by the Repealing and Amending Act, 1915 (18 of 1915)

⁴ For the Statement of Objects and Reasons, see Gazette of India, 1876, Pt V, p 347, for Proceedings in Council, see *ibid*, Supplement, pp 328, 343 and 1341

This Act has been declared, by notification under s 3 (a) of the Scheduled Districts Act, 1874 (14 of 1874), to be in force in the following Scheduled Districts, namely —

The Districts of Hazaribagh, Lohardaga and Manbhum, and Pargana Dhalbhum and the Kolhan in the District of Singhbhum See Gazette of India, 1886, Pt I, p 504 The District of Lohardaga included at this time the present District of Palamanu, which was separated in 1894; Lohardaga is now called the Ranchi District, Calcutta Gazette, 1893, Pt I, p 44

It extends to the whole of British India

Local extent

1* * * * *

2 In this Act "Magistrate" means, in the Presidency-towns, a 'Magistrate' defined
Magistrate of Police, and elsewhere the Magistrate of the district

3 Whenever the ²[Provincial Government] is of opinion that any Power to
play, pantomime or other drama performed or about to be performed prohibit
in a public place is— certain dra-
matic per-
formances

(a) of a scandalous or defamatory nature, or

(b) likely to excite feelings of disaffection to the Government
established by law in British India ³[or British Burma],
or

(c) likely to deprave and corrupt persons present at the perform-
ance,

the ²[Provincial Government] or outside the Presidency towns ⁴* * *
the ²[Provincial Government] or such Magistrate as it may empower in
this behalf, may by order prohibit the performance

Explanation—Any building or enclosure to which the public are
admitted to witness a performance on payment of money shall be deemed
a "public place" within the meaning of this section

4 A copy of any such order may be served on any person about to Power to
take part in the performance so prohibited or on the owner or occupier serve order
of any house, room or place in which such performance is intended to of prohibi-
tion
take place, and any person on whom such copy is served and who does Penalty for
or willingly permits, any act in disobedience to such order, shall be disobeying
order
punished on conviction before a Magistrate with imprisonment for a
term which may extend to three months or with fine, or with both

5 Any such order may be notified by proclamation, and a written Power to
or printed notice thereof may be stuck up at any place or places adapted notify order
for giving information of the order to the persons intending to take part
in or to witness the performance so prohibited

6 Whoever after the notification of any such order—

(a) takes part in the performance prohibited thereby or in any per- Penalty for
formance substantially the same as the performance so prohibi- disobeying
prohibition
hibited, or

(b) in any manner assists in conducting any such performance, or

(c) is, in wilful disobedience to such order, present as a spectator
during the whole or any part of any such performance, or

¹ The words "And it shall come into force at once" rep. by the Repealing and
Amending Act, 1914 (10 of 1914)

² Subs. by the A. O. for L. G.

³ Ins. by the A. O.

⁴ The words "and Rangoon" rep. by the A. O.

(d) being the owner or occupier, or having the use of any house, room or place, opens keeps or uses the same for any such performance, or permits the same to be opened kept or used for any such performance,

shall be punishable on conviction before a Magistrate with imprisonment for a term which may extend to three months, or with fine, or with both

Power to
call for
information

7 For the purpose of ascertaining the character of any intended public dramatic performance, the ¹[Provincial Government], or such officer as it may specially empower in this behalf, may apply to the author, proprietor or printer of the drama about to be performed or to the owner or occupier of the place in which it is intended to be performed, for such information as the ¹[Provincial Government] or such officer thinks necessary

Every person so applied to shall be bound to furnish the same to the best of his ability, and whoever contravenes this section shall be deemed to have committed an offence under section 176 of the Indian Penal Code XL
186

Power to
grant war-
rant to
Police to
enter and
arrest and
seize

8 If any Magistrate has reason to believe that any house, room or place is used, or is about to be used for any performance prohibited under this Act, he may, by his warrant authorize any officer of Police to enter with such assistance as may be requisite by night or by day, and by force if necessary, any such house, room or place, and to take into custody all persons whom he finds therein and to seize all scenery, dresses and other articles found therein and reasonably suspected to have been used or to be intended to be used for the purpose of such performance

Saving of
prosecutions
under
Penal Code
sections 124A
and 294

9 No conviction under this Act shall bar a prosecution under section 124A or section 294 of the Indian Penal Code XL
186

Power to
prohibit
dramatic
performance
in any local
area except
under
license

10 Whenever it appears to the ¹[Provincial Government] that the provisions of this section are required in any local area, it may ²* * * declare by notification in the ³[Official Gazette], that such provisions are applied to such area from a day to be fixed in the notification

On and after that day the ¹[Provincial Government] may order that no dramatic performance shall take place in any place of public entertainment within such area except under a license to be granted by

¹ Subs by the A O for L G

² The words with the sanction of the G G in C rep by the Decentralization Act 1914 (4 of 1914)

³ Subs by the A O for local official Gazette

such ¹[Provincial Government], or such officer as it may specially empower in this behalf

The ¹[Provincial Government] may also order that no dramatic performance shall take place in any place of public entertainment within such area, unless a copy of the piece if and so far as it is written, or some sufficient account of its purport, if and so far as it is in pantomime, has been furnished not less than three days before the performance, to the ¹[Provincial Government] or to such officer as it may appoint in this behalf

A copy of any order under this section may be served on any keeper of a place of public entertainment, and if thereafter he does, or willingly permits any act in disobedience to such order he shall be punishable on conviction before a Magistrate with imprisonment for a term which may extend to three months, or with fine or with both

11 [Powers exercisable by Governor General] Rep by the A O

12 Nothing in this Act applies to any *jatras* or performances of a like kind at religious festivals

Exclusion
of per-
formances
at reli-
gious
festivals

THE BHAUNAGAR ACT 1876

ACT No XX OF 1876 ²

[16th December, 1876]

An Act to give better effect to certain agreements with the Thakur of Bhaunagar

WHEREAS the villages mentioned in the Schedule hereto annexed (hereinafter called the scheduled villages) are the property of the Thakur of Bhaunagar and were by the Treaty of Bassein dated the thirty first day of December 1802 separated from the Native State or States known as the territory of Kathiawad and ceded to the British Government,

Preamble

and whereas by ³Regulation VI of 1816 of the Governor of Bombay in Council the Regulations in force throughout the Presidency of Bombay were extended to the said villages, and such villages thereby became subject to the jurisdiction of the Revenue, Civil and Criminal Courts established in that Presidency

¹ Subs by the A O for L G

² For Proceedings in Council relating to the Bill which was introduced and passed at the same meeting of the Council see Gazette of India 1876, Supplement, p 1351

³ Bom Reg 6 of 1816 was rep by Bom Reg 1 of 1827

and whereas the said Thákur of Bhaunagar is also the proprietor of divers villages, forming part of the said territory, and hereinafter called the Kathiawad villages

and whereas the British Government have exercised certain powers of government over the said territory, but such territory has never been treated as being British territory, nor as having been vested in the East India Company, nor in Her Majesty the Queen of Great Britain and Ireland and Empress of India, and the said Kathiawad villages have consequently never been subject to the laws in force in the Presidency of Bombay,

and whereas in the year 1820 the British Government established a Political Agency for the said territory of Kathiawad,

and whereas in the year 1857 the said Thakur was, by an order of the British Government, invested in respect of the same villages with certain powers of sovereignty limited by and subject to the rules laid down for the government and conduct of the said Kathiawad Political Agency,

and whereas, for divers reasons of State affecting the welfare of British India, the British Government became desirous of ceding to the Thakur of Bhaunagar the scheduled villages, to be held by him on the same conditions as those on which he holds the Kathiawad villages, and for that purpose certain agreements were made and certain notifications published which were intended to operate as a cession of the scheduled villages

and whereas on the twenty ninth day of January, 1866, the Governor of Bombay in Council published a notification declaring that, in accordance with the agreement last hereinbefore recited the scheduled villages were from and after the first day of February 1866 removed from the jurisdiction of the Revenue, Civil and Criminal Courts of the Bombay Presidency and transferred to the supervision of the said Political Agency in Kathiawad on the same conditions as to jurisdiction as the said Kathiawad villages,

and whereas the intention of the said agreements and notifications was that the villages comprised therein should be ceded to and vested in the Thakur of Bhaunagar, to be held by him on the terms on which he holds the Kathiawad villages

and whereas ever since the first day of February, 1866, the scheduled villages have been governed according to the intentions of the said agreements, and acts of executive authority have been done, proceedings taken and decrees and sentences passed by the Thákur of Bhaunagar and his officers, and by the officers of the said Political Agency, and by the Courts of Justice appointed to exercise jurisdiction within the limits of the said Political Agency,

and whereas it now appears that such agreements and notifications were not worded so as to express their true intention and that the scheduled villages did not thereby cease to be British territory, or to be subject to the laws in force in the Presidency of Bombay

and whereas by a notification dated the fifth day of December, 1876, after reciting to the effect afove recited and reciting that the Secretary of State for India had on behalf of Her Majesty the Queen of Great Britain and Empress of India given his sanction to the cession intended to be thereby effected the Governor General in Council with the sanction aforesaid had thereby ceded and grant to the said Thakur of Bhaunagar his heirs and successors the said scheduled villages to hold the same unto the said Thakur his heirs and successors on the terms and subject to the rules on and subject to which he holds the said Kāthiawād villages but it was thereby provided that in case the said Thakur his heirs or successors should commit any acts of misgovernment which, in the opinion of the Governor General in Council rendered it inexpedient that the said Thakur his heirs and successors should continue to hold the said scheduled villages the Governor General in Council might resume the villages thereby ceded and reannex the same to Her Majesty's dominions

and whereas it is expedient (so far as relates to any past or future proceedings in British India) to ratify the aforesaid acts proceedings and sentences of the Thakur of Bhaunagar and the officers and Courts aforesaid and to indemnify the said Thakur and officers against any liability in respect thereof and to provide that no title to property shall be disturbed by any act proceeding or sentence of any other authority

It is hereby enacted as follows —

1 This Act may be called the Bhaunagar Act 1876

It extends only to British India

and it shall come into force at once

Short title
Local extent

Commence-
ment.

2 The said scheduled villages shall be deemed to have been on and after the said first day of February 1866 excluded from the jurisdiction of the Revenue Civil and Criminal Courts of the Bombay Presidency

Scheduled
villages
excluded
from juris-
diction of
Bombay
Courts

3 [Validation of acts done after 1st February 1866] Rep by the Amending Act 1895 (VII of 1895)

4 Nothing in this Act shall affect any jurisdiction which any Court of Justice in British India may for the time being be entitled to exercise over persons resident or being beyond the limits of British India

Saving of
personal
jurisdiction
of Courts
of British
India.

SCHEDULE

Bhaunagar Taluqa

Bhaunagar	Málanka	Háthab
Wadwa	Bhutesar	Khadsuliu
Ruha	Bhumli	Bhadbadiu
Akwara	Ratanpur Juna	Alápur
Adhiwára	Ratanpur Nuwá	Thalsar
Tarsamía	Kolah	Lakhanka
Jaspará	Kobri	Sultánpur
Phulsar	Bhurí	Wávrí
Karmadiu	Bhundarnu	Rámpura
Surka	Churi	Bhenswarí } (<i>u aste</i>)
Tarak Pálrí	Sankrásar	Jhánjrá
Nárf	Bhadole	
Budhel	Nagdhaníba	

Sihor Taluqa

Sihor	Ratanpur near Táná	Rajpura
Usrad	Wadiu	Khakhriu
Agialí	Walawad	Kardej
Táná	Megwadar	Surká
Bordí	Ghángli	Jámبالu
Kájawadar	Nesra	Kuchotiu (<i>u aste</i>)
	Chirora (<i>u aste</i>)	

New Villages

Gundi	Trapaj	Pithalpur
Mándwá	Bapára	Khantari
Sosná	Páncnppla	Deogána
Paniáli	Rájpura	Thordí
	Khadarpur Mitiverdi	

Inam Villages

Wartej	Sámpura	Sodwadra
Sidhsar	Phariádku	Sedhawadar
	Kálví (<i>u aste</i>)	

1877 Act I]

*Specific Relief*SCHEDULE—*contd*

DHANDUKA PARGANA

Patna Taluqa

Pátua	Kánutalao	Dantretia
Bharbár	Ratanwau	Samandiála
Chakampur	Keria	Karianí
Sirwau	Jamraí	Láthidhar
Jhunjhawadar	Ujalwau	Wclawadar
Pati	Jotingra	Virdhi or Rájghar
Keria near Pati	Shirbahi	Sajeli
Bhámbhan	Dhakwáli	Otera
Samandeaí 2	Wajeli	Sándhera.
Tajpur	Lundrá	Nágapur

Malpur

RANPUR PARGANA

Botad Taluqa

Botád	Dánkniá	Kaniá 1
Hárdar	Khakoi	Rajpura
Sirwánua	Turkhá	Juriá

THE SPECIFIC RELIEF ACT, 1877

CONTENTS

PREAMBLE

PART I

PRELIMINARY

SECTIONS

- 1 Short title
- Local Extent
- Commencement
- 2 [*Repealed*]
- 3 Interpretation clause
- Words defined in Contract Act
- 4 Savings
- 5 Specific relief how given
- 6 Preventive relief
- 7 Relief not granted to enforce penal law

PART II
OF SPECIFIC RELIEF

CHAPTER I

OF RECOVERING POSSESSION OF PROPERTY

(a) Possession of Immoveable Property

SECTIONS

- 8 Recovery of specific immoveable property
- 9 Suit by per on dispossessed of immoveable property
- 10 Recovery of specific moveable property
- 11 Liability of person in possession not as owner to deliver to person entitled to immediate possession

CHAPTER II

OF THE SPECIFIC PERFORMANCE OF CONTRACTS

(a) Contracts which may be specifically enforced

- 12 Cases in which specific performance enforceable
- 13 Contract of which the subject has partially ceased to exist
- 14 Specific performance of part of contract where part unperformed is small
- 15 Specific performance of part of contract where part unperformed is large
- 16 Specific performance of independent part of contract
- 17 Bar in other cases of specific performance of part of contract
- 18 Purchaser's rights against vendor with imperfect title
- 19 Power to award compensation in certain cases
- 20 Liquidation of damages not a bar to specific performance

(b) Contracts which cannot be specifically enforced

- 21 Contracts not specifically enforceable

(c) Of the Discretion of the Court

- 22 Discretion as to decreeing specific performance

(d) For whom Contracts may be specifically enforced

- 23 Who may obtain specific performance

(e) For whom Contracts cannot be specifically enforced

- 24 Personal bars to the relief
- 25 Contracts to sell property by one who has no title, or who is a voluntary settler

SECTIONS

- (f) *For whom Contracts cannot be specifically enforced, except with a Variation*
- 26 Non enforcement except with variation
- (g) *Against whom Contracts may be specifically enforced*
- 27 Relief against parties and persons claiming under them by subsequent title
- 27A Specific performance in case of part performance of contract to lease
- (h) *Against whom Contracts cannot be specifically enforced*
- 28 What parties cannot be compelled to perform
- (i) *The effect of dismissing a Suit for Specific Performance.*
- 29 Bar of suit for breach after dismissal
- (j) *Awards and Directions to execute Settlements*
- 30 Application of preceding sections to awards and testamentary directions to execute settlements

CHAPTER III

OF THE RECTIFICATION OF INSTRUMENTS

- 31 When instrument may be rectified
- 32 Presumption as to intent of parties
- 33 Principles of rectification
- 34 Specific enforcement of rectified contract

CHAPTER IV

OF THE RESCISSION OF CONTRACTS

- 35 When rescission may be adjudged
- 36 Rescission for mistake
- 37 Alternative prayer for rescission in suit for specific performance
- 38 Court may require party rescinding to do equity

CHAPTER V

OF THE CANCELLATION OF INSTRUMENTS

- 39 When cancellation may be ordered
- 40 What instruments may be partially cancelled
- 41 Power to require party for whom instrument is cancelled to make compensation

CHAPTER VI

OF DECLARATORY DECREES

- 42 Discretion of Court as to declaration of status or right Bar to such declaration
- 43 Effect of declaration

CHAPTER VII

OF THE APPOINTMENT OF RECEIVERS

SECTIONS

- 44 Appointment of Receivers discretionary
Reference to Code of Civil Procedure
-

CHAPTER VIII

OF THE ENFORCEMENT OF PUBLIC DUTIES

- 45 Power to order public servants and others to do certain specific acts
Exemptions from such power
46 Application how made
Procedure thereon
Order in alternative
47 Peremptory order
48 Execution of, and appeal from orders
49 Costs
50 Bar to issue of *mandamus*
51 Power to frame rules
-

PART III

OF PREVENTIVE RELIEF

CHAPTER IX

OF INJUNCTIONS GENERALLY

- 52 Preventive relief how granted
53 *Temporary injunctions*
Perpetual injunctions
-

CHAPTER X

OF PERPETUAL INJUNCTIONS

- 54 Perpetual injunctions when granted
55 Mandatory injunctions
56 Injunction when refused
57 Injunction to perform negative agreement
-

ACT No. I of 1877¹

[7th February, 1877.]

An Act to define and amend the law relating to certain kinds of Specific Relief

WHEREAS it is expedient to define and amend the law relating to **Preamble.**
certain kinds of specific relief obtainable in civil suits, It is hereby
enacted as follows —

PART I

PRELIMINARY

1 This Act may be called the Specific Relief Act, 1877

Short title.

¹ For the Statement of Objects and Reasons, see Gazette of India, 1875, Pt V, p 258, for the Report of the Select Committee, see *ibid*, 1876, Pt V, p 1445, for discussions in Council, see *ibid*, 1875 Supplement, pp 981 and 1025, *ibid*, 1876, Supplement, p 1284, and *ibid*, 1877, Supplement, p 177

It has been extended, by notification under s 5 of the Scheduled Districts Act, 1874 (14 of 1874), to the following Scheduled Districts namely —

the Scheduled Districts of the Punjab	See Gazette of India, 1877, Pt I, p 562
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the Districts of Kámrup, Nagaong Darrang Sib-sagar, Lakhimpur Goalpara (excluding the Eastern Dairs), Sylhet and Cachar (excluding the North Cachar Hills)	Ditto,	1877 Pt I, p 662
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the Districts of Hazáribágh, Lohárdaga [including the present District of Palamau, separated in 1894] and Mámbhum, and Pargana Dhálbhum in the District of Singbhum [Lohardaga is now called the Ranchi District, Calcutta Gazette, 1899 Pt I, p 44]	Ditto	1878 Pt II p 82
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the Scheduled Districts of the Central Provinces	Ditto	1879, Pt I, p 772
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Sind	Ditto	1880 Pt I, p 676
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Coorg	Ditto,	1882 Pt I, p 217
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Western Jalpáiguri	Ditto,	1882, Pt I, p 511
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Kumion and Garhwál and the Taráí Parganas (except s 9)	Ditto	1895, Pt I, p 573
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That portion of the Jalpáiguri District known as the Western Dairs	Ditto,	1896, Pt I, p 44
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Ajmer and Merwára	Ditto,	1897, Pt II, p 1415
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the Darjeeling District	Ditto,	1919, Pt I, p 152.
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S 9 has been extended by notification under s 5 of the Scheduled Districts Act, 1874 (14 of 1874) to the Taluqs of Bhadrachalam and Raayapalli and the Rampá

(Part I—Preliminary)

- Local extent** It extends to the whole of British India, except the Scheduled Districts as defined in Act No XIV of 1874¹
- Commencement** And it shall come into force on the first day of May, 1877.
- 2** [Repeal of enactments] *Rep by the Amending Act, 1891 (XII of 1891)*
- 3** In this Act, unless there be something repugnant in the subject or context,—
- “obligation” includes every duty enforceable by law
- “trust” includes every species of express, implied, or constructive fiduciary ownership
- “trustee” includes every person holding, expressly, by implication, or constructively, a fiduciary character

Illustrations

(a) Z bequeaths land to A not doubting that he will pay thereout an annuity of Rs 1,000 to B for his life. A accepts the bequest. A is a trustee within the meaning of this Act, for B, to the extent of the annuity.

(b) A is the legal, medical, or spiritual adviser of B. By availing himself of his situation as such adviser, A gains some pecuniary advantage which might otherwise have accrued to B. A is a trustee for B, within the meaning of this Act, of such advantage.

(c) A, being B's banker, discloses for his own purpose the state of B's account. A is a trustee, within the meaning of this Act for B, of the benefit gained by him by means of such disclosure.

(d) A, the mortgagee of certain leaseholds, renews the lease in his own name. A is a trustee within the meaning of this Act of the renewed lease, for those interested in the original lease.

(e) A, one of several partners, is employed to purchase goods for the firm. A, unknown to his co-partners, supplies them, at the market price, with goods previously bought by himself when the price was lower and thus makes a considerable profit. A is a trustee for his co-partners within the meaning of this Act of the profit so made.

(f) A, the manager of B's indigo factory, becomes agent for C, a vendor of indigo seed and receives, without B's assent, commission on the seed purchased from C for the factory. A is a trustee, within the meaning of this Act, for B, of the commission so received.

(g) A buys certain land with notice that B has already contracted to buy it. A is a trustee, within the meaning of this Act, for B, of the land so bought.

(h) A buys land from B having notice that C is in occupation of the land. A omits to make any inquiry as to the nature of C's interest therein. A is a trustee, within the meaning of this Act for C, to the extent of that interest.

Country, see Gazette of India 1879 Pt I, p 630, to tracts in the Godavari Agency to which it had not been extended *see* *ibid*, 1900 Pt I, p 59, also Fort St George Gazette 1900 Pt I p 169 and to Kumáon, Garhwál the Tará Parganas, the scheduled portion of the Mirzápur District, and Jaunsar Báwar, *see* Gazette of India, 1836, Pt I, p 452.

S 9 has been declared to be in force in British Baluchistan by the Baluchistan Laws Regulation 1913 (2 of 1913), s 3.

The Act has been declared to be in force in Panth Piplođa, by the Panth Piplođa Laws Regulation, 1929 (1 of 1929), s. 2.

¹ The Scheduled Districts Act, 1874 (14 of 1874), *rep by* the A O

(Part I—Preliminary Part II—Of Specific Relief Chapter I—Of recovering Possession of Property)

“settlement” means any instrument (other than a will or codicil as defined by the Indian Succession Act¹) whereby the destination or devolution of successive interests in moveable or immoveable property is disposed of or is agreed to be disposed of

and all words occurring in this Act which are defined in the Indian Contract Act, 1872, shall be deemed to have the meanings respectively assigned to them by that Act Words defined in Contract Act

4 Except where it is herein otherwise expressly enacted, nothing in this Act shall be deemed—

- (a) to give any right to relief in respect of any agreement which is not a contract
- (b) to deprive any person of any right to relief, other than specific performance, which he may have under any contract, or
- (c) to affect the operation of the Indian Registration Act² on documents

5 Specific relief is given—

Specific relief how given

- (a) by taking possession of certain property and delivering it to a claimant
- (b) by ordering a party to do the very act which he is under an obligation to do,
- (c) by preventing a party from doing that which he is under an obligation not to do
- (d) by determining and declaring the rights of parties otherwise than by an award of compensation, or
- (e) by appointing a receiver

6 Specific relief granted under clause (c) of section 5 is called preventive relief Preventive relief

7 Specific relief cannot be granted for the mere purpose of enforcing a penal law Relief not granted to enforce penal law

PART II

OF SPECIFIC RELIEF

CHAPTER I

OF RECOVERING POSSESSION OF PROPERTY

(a) Possession of Immoveable Property

8 A person entitled to the possession of specific immoveable property may recover it in the manner prescribed by the Code of Civil Procedure³ pro-Recovery of specific immoveable property

¹ See now the Indian Succession Act 1925 (39 of 1925)

² See now the Indian Registration Act 1908 (16 of 1908)

³ See now the Code of Civil Procedure 1908 (Act 5 of 1908)

(Part II —Of Specific Relief Chapter I —Of recovering Possession of Property)

Suit by person dispossessed of immovable property

19. If any person is dispossessed without his consent of immovable property otherwise than in due course of law, he or any person claiming through him may, by suit 2* * * * recover possession thereof, notwithstanding any other title that may be set up in such suit

Nothing in this section shall bar any person from suing to establish his title to such property and to recover possession thereof

No suit under this section shall be brought against ³[the Secretary of State, the Central Government, the Crown Representative or any Provincial Government]

No appeal shall lie from any order or decree passed in any suit instituted under this section, nor shall any review of any such order or decree be allowed

(b) Possession of Moveable Property

Recovery of specific moveable property

10 A person entitled to the possession of specific moveable property may recover the same in the manner prescribed by the Code of Civil Procedure ⁴

Explanation 1 —A trustee may sue under this section for the possession of property to the beneficial interest in which the person for whom he is trustee is entitled

Explanation 2 —A special or temporary right to the present possession of property is sufficient to support a suit under this section

Illustrations

(a) A bequeaths land to B for his life, with remainder to C A dies B enters on the land, but C, without B's consent, obtains possession of the title deeds B may recover them from C

(b) A pledges certain jewels to B to secure a loan B disposes of them before he is entitled to do so A, without having paid or tendered the amount of the loan, sues B for possession of the jewels The suit should be dismissed, as A is not entitled to their possession, whatever right he may have to secure their safe custody

(c) A receives a letter addressed to him by B B gets back the letter without A's consent A has such a property in the letter as entitles him to recover it from B

(d) A deposits books and papers for safe custody with B B loses them and C finds them, but refuses to deliver them to B when demanded B may recover them from C, subject to C's right, if any, under section 163 of the Indian Contract Act, 1872

(e) A, a warehouse keeper, is charged with the delivery of certain goods to Z, which B takes out of A's possession A may sue B for the goods

¹ But see as to tenancies in the Punjab the Punjab Tenancy Act 1867 (16 of 1867), s. 51

² The words, 'instituted within six months from the date of the dispossession' rep. by the Amending Act, 1891 (12 of 1891)

³ Subs. by the A. O. for 'the Govt

⁴ See now the Code of Civil Procedure, 1908 (Act 5 of 1903)

(Part II —Of Specific Relief Chapter I—Of recovering Possession of Property Chapter II —Of the Specific Performance of Contracts)

11 Any person having the possession or control of a particular article of moveable property, of which he is not the owner, may be compelled specifically to deliver it to the person entitled to its immediate possession, in any of the following cases —

Liability of person in possession, not as owner, to deliver to person entitled to immediate possession

- (a) when the thing claimed is held by the defendant as the agent or trustee of the claimant,
- (b) when compensation in money would not afford the claimant adequate relief for the loss of the thing claimed,
- (c) when it would be extremely difficult to ascertain the actual damage caused by its loss,
- (d) when the possession of the thing claimed has been wrongfully transferred from the claimant

Illustrations—

of clause (a)—

A proceeding to Europe leaves his furniture in charge of B as his agent during his absence B without A's authority pledges the furniture to C and C knowing that B had no right to pledge the furniture advertises it for sale C may be compelled to deliver the furniture to A for he holds it as A's trustee

of clause (b)—

Z has got possession of an idol belonging to A's family and of which A is the proper custodian Z may be compelled to deliver the idol to A

of clause (c)—

A is entitled to a picture by a dead painter and a pair of rare China vases B has possession of them The articles are of too special a character to bear an ascertainable market value B may be compelled to deliver them to A

CHAPTER II

OF THE SPECIFIC PERFORMANCE OF CONTRACTS

(a) *Contracts which may be specifically enforced*

12 Except as otherwise provided in this Chapter the specific performance of any contract may in the discretion of the Court be enforced—

Cases in which specific performance enforceable

- (a) when the act agreed to be done is in the performance, wholly or partly of a trust
- (b) when there exists no standard for ascertaining the actual damage caused by non performance of the act agreed to be done,
- (c) when the act agreed to be done is such that pecuniary compensation for its non performance would not afford adequate relief or
- (d) when it is probable that pecuniary compensation cannot be got for the non performance of the act agreed to be done

(Part II—Of Specific Relief Chapter II—Of the Specific Performance of Contracts)

Explanation—Unless and until the contrary is proved, the Court shall presume that the breach of a contract to transfer immoveable property cannot be adequately relieved by compensation in money, and that the breach of a contract to transfer moveable property can be thus relieved

Illustrations—

of clause (a)—

1 A holds certain stock in trust for B. A wrongfully disposes of the stock. The law creates an obligation on A to restore the same quantity of stock to B and B may enforce specific performance of this obligation.

of clause (b)—

A agrees to buy and B agrees to sell a picture by a dead painter and two rare China vases. A may compel B specifically to perform this contract, for there is no standard for ascertaining the actual damage which would be caused by its non-performance.

of clause (c)—

A contracts with B to sell him a house for Rs 1000. B is entitled to a decree directing A to convey the house to him by paying the purchase money.

In consideration of being released from certain obligations imposed on it by its Act of Incorporation, a railway company contracts with Z to make an archway through their railway to connect lands of Z severed by the railway, to construct a road between certain specified points to pay a certain annual sum towards the maintenance of this road and also to construct a siding and a wharf as specified in the contract. Z is entitled to have this contract specifically enforced for his interest in its performance cannot be adequately compensated for by money, and the Court may appoint a proper person to superintend the construction of the archway, road, siding and wharf.

A contracts to sell and B contracts to buy, a certain number of railway shares of a particular description. A refuses to complete the sale. B may compel A specifically to perform this agreement, for the shares are limited in number and not always to be had in the market, and their possession carries with it the status of a shareholder which cannot otherwise be procured.

A contracts with B to paint a picture for B who agrees to pay therefor Rs 1000. The picture is painted. B is entitled to have it delivered to him on payment or tender of the Rs 1000.

of clause (d)—

A transfers without endorsement but for valuable consideration, a promissory note to B. A becomes insolvent and C is appointed his assignee. B may compel C to endorse the note for C has succeeded to A's liabilities and a decree for pecuniary compensation for not endorsing the note would be fruitless.

Contract of which the subject has partially ceased to exist

13 Notwithstanding anything contained in section 56 of the Indian Contract Act, a contract is not wholly impossible of performance because a portion of its subject matter, existing at its date, has ceased to exist at the time of the performance.

Illustrations—

(a) A contracts to sell a house to B for a lakh of rupees. The day after the contract is made the house is destroyed by a cyclone. B may be compelled to perform his part of the contract by paying the purchase money.

¹ This Illustration is rep. wherever the Indian Trusts Act 1882 (2 of 1882) is in force—see ss 1 and 2 of that Act.

(Part II —Of Specific Relief Chapter II —Of the Specific Performance of Contracts)

(b) In consideration of a sum of money payable by B, A contracts to grant an annuity to B for B's life. The day after the contract has been made, B is thrown from his horse and killed. B's representative may be compelled to pay the purchase money.

14 Where a party to a contract is unable to perform the whole of his part of it, but the part which must be left unperformed bears only a small proportion to the whole in value, and admits of compensation in money, the Court may, at the suit of either party, direct the specific performance of so much of the contract as can be performed, and award compensation in money for the deficiency.

Illustrations

(a) A contracts to sell B a piece of land consisting of 100 bighas. It turns out that 98 bighas of the land belong to A, and the two remaining bighas to a stranger, who refuses to part with them. The two bighas are not necessary for the use or enjoyment of the 98 bighas nor so important for such use or enjoyment that the loss of them may not be made good in money. A may be directed at the suit of B to convey to B the 98 bighas and to make compensation to him for not conveying the two remaining bighas. Or B may be directed at the suit of A to pay to A, on receiving the conveyance and possession of the land, the stipulated purchase money less a sum awarded as compensation for the deficiency.

(b) In a contract for the sale and purchase of a house and lands for two lakhs of rupees it is agreed that part of the furniture should be taken at a valuation. The Court may direct specific performance of the contract notwithstanding the parties are unable to agree as to the valuation of the furniture and may either have the furniture valued in the suit and include it in the decree for specific performance or may confine its decree to the house.

15 Where a party to a contract is unable to perform the whole of his part of it, and the part which must be left unperformed forms a considerable portion of the whole, or does not admit of compensation in money, he is not entitled to obtain a decree for specific performance. But the Court may at the suit of the other party direct the party in default to perform specifically so much of his part of the contract as he can perform provided that the plaintiff relinquishes all claim to further performance and all right to compensation either for the deficiency, or for the loss or damage sustained by him through the default of the defendant.

Illustrations

(a) A contracts to sell to B a piece of land consisting of 100 bighas. It turns out that 50 bighas of the land belong to A, and the other 50 bighas to a stranger who refuses to part with them. A cannot obtain a decree against B for the specific performance of the contract but if B is willing to pay the price agreed upon and to take the 50 bighas which belong to A, waiving all right to compensation either for the deficiency or for loss sustained by him through A's neglect or default B is entitled to a decree directing A to convey those 50 bighas to him on payment of the purchase money.

(b) A contracts to sell to B an estate with a house and garden for a lakh of rupees. The garden is important for the enjoyment of the house. It turns out that A is unable to convey the garden. A cannot obtain a decree against B for the specific performance of the contract but if B is willing to pay the price agreed upon, and to take the estate and house without the garden, waiving all

(Part II —Of Specific Relief Chapter II —Of the Specific Performance of Contracts)

right to compensation either for the deficiency or for loss sustained by him through A's neglect or default B is entitled to a decree directing A to convey the house to him on payment of the purchase money

Specific performance of independent part of contract.

16 When a part of a contract which, taken by itself, can and ought to be specifically performed, stands on a separate and independent footing from another part of the same contract which cannot or ought not to be specifically performed, the Court may direct specific performance of the former part

Bar in other cases of specific performance of part of contract

17 The Court shall not direct the specific performance of a part of a contract except in cases coming under one or other of the three last preceding sections

Purchaser's rights against vendor with an imperfect title

18 Where a person contracts to sell or let certain property, having only an imperfect title thereto the purchaser or lessee (except as otherwise provided by this Chapter) has the following rights —

- (a) if the vendor or lessor has subsequently to the sale or lease acquired any interest in the property, the purchaser or lessee may compel him to make good the contract out of such interest,
- (b) where the concurrence of other persons is necessary to validate the title and they are bound to convey at the vendor's or lessor's request the purchaser or lessee may compel him to procure such concurrence,
- (c) where the vendor professes to sell unincumbered property, but the property is mortgaged for an amount not exceeding the purchase money, and the vendor has in fact only a right to redeem it the purchaser may compel him to redeem the mortgage and to obtain a conveyance from the mortgagee
- (d) where the vendor or lessor sues for specific performance of the contract, and the suit is dismissed on the ground of his imperfect title, the defendant has a right to a return of his deposit (if any) with interest thereon to his costs of the suit, and to a lien for such deposit interest and costs on the interest of the vendor or lessor in the property agreed to be sold or let

Power to award compensation in certain cases

19 Any person suing for the specific performance of a contract may also ask for compensation for its breach either in addition to, or in substitution for such performance

(Part II — Of Specific Relief Chapter II — Of the Specific Performance of Contracts)

If in any such suit the Court decides that specific performance ought not to be granted, but that there is a contract between the parties which has been broken by the defendant and that the plaintiff is entitled to compensation for that breach, it shall award him compensation accordingly.

If in any such suit the Court decides that specific performance ought to be granted, but that it is not sufficient to satisfy the justice of the case, and that some compensation for breach of the contract should also be made to the plaintiff, it shall award him such compensation accordingly.

Compensation awarded under this section may be assessed in such manner as the Court may direct.

Explanation — The circumstance that the contract has become incapable of specific performance does not preclude the Court from exercising the jurisdiction conferred by this section.

Illustration —

of the second paragraph—
A contracts to sell a hundred maunds of rice to B. B brings a suit to compel A to perform the contract or to pay compensation. The Court is of opinion that A has made a valid contract and has broken it, without excuse to the injury of B, but that specific performance is not the proper remedy. It shall award to B such compensation as it deems just.

of the third paragraph—

A contracts with B to sell him a house for Rs. 1000, the price to be paid and the possession given on the 1st January 1877. A fails to perform his part of the contract, and B brings his suit for specific performance and compensation, which is decided in his favour on the 1st January 1878. The decree may besides ordering specific performance, award to B compensation for any loss which he has sustained by A's refusal.

of the *Explanation*—

A a purchaser sues B his vendor for specific performance of a contract for the sale of a patent. Before the hearing of the suit the patent expires. The Court may award A compensation for the non-performance of the contract and may if necessary amend the plaint for that purpose.

A sues for the specific performance of a resolution passed by the Directors of a public company under which he was entitled to have a certain number of shares allotted to him, and for compensation for the non-performance of the resolution. All the shares had been allotted before the institution of the suit. The Court may, under this section, award A compensation for the non-performance.

2) A contract, otherwise proper to be specifically enforced, may be thus enforced, though a sum be named in it as the amount to be paid in case of its breach, and the party in default is willing to pay the same. Liquidation of damages not a bar to specific performance

Illustration

A contracts to grant B an underlease of property held by A under C, and that he will apply to C for a license necessary to the validity of the underlease, and that if the license is not procured A will pay B Rs. 10,000. A refuses to apply for the license and offers to pay B the Rs. 10,000. B is nevertheless entitled to have the contract specifically enforced if C consents to give the license.

(Part II—Of Specific Relief Chapter II—Of the Specific Performance of Contracts)

(b) *Contracts which cannot be specifically enforced*

21 The following contracts cannot be specifically enforced —

- (a) a contract for the non performance of which compensation in money is an adequate relief,
- (b) a contract which runs into such minute or numerous details, or which is so dependent on the personal qualifications or volition of the parties, or otherwise from its nature is such that the Court cannot enforce specific performance of its material terms,
- (c) a contract the terms of which the Court cannot find with reasonable certainty,
- (d) a contract which is in its nature revocable,
- (e) a contract made by trustees either in excess of their powers or in breach of their trust,
- (f) a contract made by or on behalf of a corporation or public company created for special purposes, or by the promoters of such company, which is in excess of its powers,
- (g) a contract the performance of which involves the performance of a continuous duty extending over a longer period than three years from its date,
- (h) a contract of which a material part of the subject matter, supposed by both parties to exist, has, before it has been made, ceased to exist

And, save as provided by the Code of Civil Procedure¹, ²[and the Indian Arbitration Act, 1899,] no contract to refer ³[present or future] differences] to arbitration shall be specifically enforced, ⁴but if any person who has made such a contract and has refused to perform it sues in respect of any subject which he has contracted to refer, the existence of such contract shall bar the suit

Illustrations—

to (a)—

A contracts to sell and B contracts to buy a lakh of rupees in the four per cent loan of the 5[Central Government]

¹ See now the Code of Civil Procedure 1908 (Act 5 of 1908)

² Ins by the Indian Arbitration Act 1899 (9 of 1899) s 21

³ Subs by s 21 *ibid* for a controversy

⁴ The last thirty seven words of s 21 do not apply to any submission or arbitration to which the provisions of the Indian Arbitration Act 1899 (9 of 1899) for the time being apply (*see* s 3 of that Act) or to any agreement to refer to arbitration or to any award to which Sch II of the Code of Civil Procedure 1903 applies (*see* para 22 of that Schedule)

⁵ Subs by the A O for 1 of 1

(Part II —Of Specific Relief. Chapter II —Of the Specific Performance of Contracts)

A contracts to sell, and B contracts to buy, 40 chests of indigo at Rs 1,000 per chest

In consideration of certain property having been transferred by A to B, B contracts to open a credit in A's favour to the extent of Rs 10,000, and to honour A's drafts to that amount

The above contracts cannot be specifically enforced, for in the first and second both A and B, and in the third A, would be reimbursed by compensation in money

to (b)—

A contracts to render personal service to B

A contracts to employ B on personal service

A, an author, contracts with B, a publisher to complete a literary work

B cannot enforce specific performance of these contracts

A contracts to buy B's business at the amount of a valuation to be made by two valuers one to be named by A and the other by B. A and B each name a valuer but before the valuation is made, A instructs his valuer not to proceed

By a charter party entered into in Calcutta between A the owner of a ship and B, the charterer, it is agreed that the ship shall proceed to Rangoon and there load a cargo of rice, and thence proceed to London freight to be paid, one third on arrival at Rangoon, and two third on delivery of the cargo in London

A lets land to B and B contracts to cultivate it in a particular manner for three years next after the date of the lease

A and B contract that, in consideration of annual advances to be made by A, B will for three years next after the date of the contract grow particular crops on the land in his possession and deliver them to A when cut and ready for delivery

A contracts with B that in consideration of Rs 1,000 to be paid to him by B, he will paint a picture for B

A contracts with B to execute certain works which the Court cannot superintend

A contracts to supply B with all the goods of a certain class which B may require

A contracts with B to take from B a lease of a certain house for a specified term, at a specified rent, if the drawing room is handsomely decorated even if it is held to have so much certainty that compensation can be recovered for its breach

A contracts to marry B

The above contracts cannot be specifically enforced

to (c)—

A the owner of a refreshment room contracts with B to give him accommodation there for the sale of his goods and to furnish him with the necessary appliances. A refuses to perform his contract. The case is one for compensation and not for specific performance the amount and nature of the accommodation and appliances being undefined

to (d)—

A and B contract to become partners in a certain business the contract not specifying the duration of the proposed partnership. This contract cannot be specifically performed for if it were so performed either A or B might at once dissolve the partnership

to (e)—

A is a trustee of land with power to lease it for seven years. He enters into a contract with B to grant a lease of the land for seven years with a covenant to renew the lease at the expiry of the term. This contract cannot be specifically enforced

The Directors of a company have power to sell the concern with the sanction of a general meeting of the shareholders. They contract to sell it without any such sanction. This contract cannot be specifically enforced.

(Part II.—Of Specific Relief. Chapter II.—Of the Specific Performance of Contracts.)

Two trustees, A and B, empowered to sell trust property worth a lakh of rupees, contract to sell it to C for Rs 30 000. The contract is so disadvantageous as to be a breach of trust. C cannot enforce its specific performance.

The promoters of a company for working mines contract that the company, when formed, shall purchase certain mineral property. They take no proper precautions to ascertain the value of such property—and in fact agree to pay an extravagant price therefor. They also stipulate that the vendors shall give them a bonus out of the purchase money. This contract cannot be specifically enforced.

to (f)—

A company existing for the sole purpose of making and working a railway contract for the purchase of a piece of land for the purpose of erecting a cotton mill thereon. This contract cannot be specifically enforced.

to (g)—

A contracts to let for twenty-one years to B the right to use such part of a certain railway made by A as was upon B's land, and that B should have a right of running carriages over the whole line on certain terms, and might require A to supply the necessary engine power, and that A should during the term keep the whole railway in good repair. Specific performance of this contract must be refused to B.

to (h)—

A contracts to pay an annuity to B for the lives of C and D. It turns out that, at the date of the contract, C though supposed by A and B to be alive, was dead. The contract cannot be specifically performed.

(c) Of the Discretion of the Court

Discretion
as to decree
ing specific
performance

22 The jurisdiction to decree specific performance is discretionary, and the Court is not bound to grant such relief merely because it is lawful to do so, but the discretion of the Court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a Court of appeal.

The following are cases in which the Court may properly exercise a discretion not to decree specific performance —

I. Where the circumstances under which the contract is made are such as to give the plaintiff an unfair advantage over the defendant, though there may be no fraud or misrepresentation on the plaintiff's part.

Illustrations

(a) A, a tenant for life of certain property, assigns his interest therein to B. C contracts to buy, and B contracts to sell that interest. Before the contract is completed, A receives a mortal injury from the effects of which he dies the day after the contract is executed. If B and C were equally ignorant or equally aware of the fact, B is entitled to specific performance of the contract. If B knew the fact, and C did not, specific performance of the contract should be refused to B.

(b) A contracts to sell to B the interest of C in certain stock-in-trade. It is stipulated that the sale shall stand good, even though it should turn out that C's interest is worth nothing. In fact the value of C's interest depends on the result of certain partnership accounts, on which he is heavily in debt to his partners. The indebtedness is known to A, but not to B. Specific performance of the contract should be refused to A.

(Part II —Of Specific Relief Chapter II —Of the Specific Performance of Contracts)

(c) A contracts to sell and B contracts to buy certain land. To protect the land from floods it is necessary for its owner to maintain an expensive embankment. B does not know of this circumstance and A contracts to remove it from him. Specific performance of the contract should be refused to A.

(d) A's property is put up to auction. B requests C, A's attorney, to bid for him. C does this inadvertently and in good faith. The persons present seeing the vendor's attorney bidding think that he is a mere bidder and cease to compete. The lot is knocked down to B at a low price. Specific performance of the contract should be refused to B.

II Where the performance of the contract would involve some hardship on the defendant which he did not foresee whereas its non-performance would involve no such hardship on the plaintiff

III Conditions

(c) A is entitled to some land under his father's will on condition that it is sold within twenty-five years. Half the purchase money shall go to B. A for getting the condition contracts before the expiration of the twenty-five years to sell the land to C. Here the enforcement of the contract would operate so harshly on A that the Court will not compel its specific performance in favour of C.

(f) A and B, trustees, join their beneficiary C in a contract to sell the trust estate to D and personally agree to exonerate the estate from all encumbrances to which it is subject. The purchase money is not nearly enough to discharge those encumbrances. Though at the date of the contract the vendors believed it to be sufficient, specific performance of the contract should be refused to D.

(g) A, the owner of an estate, contracts to sell it to B and stipulates that he shall not be obliged to define its boundary. The estate really comprises a valuable property not known to either to be part of it. Specific performance of the contract should be refused to B and A reserves his claim to the unknown property.

(h) A contracts with B to sell him certain land and to make a road to it from a certain railway station. It is found after a while that A cannot make the road without exposing himself to litigation. Specific performance of the part of the contract relating to the road should be refused to B, even though it may be held that he is entitled to specific performance of the rest with compensation for loss of the road.

(i) A, a lessee of mines, contracts with B his lessee or that at any time during the continuance of the lease B may give notice of his desire to the lessor to remove and place another lot of the mine, and that the lessor shall have the lease specified in the notice and shall not be bound to give notice of the lease. Such a contract is void and specific performance of the contract should be refused to B.

(j) A contracts to give a lease to B. The title is defective so as to prevent access to the land. A is not obliged to give the lease to B. Specific performance of the contract should be refused to B.

(k) A contracts to sell to B a farm and to deliver all the goods of a certain class to B. The goods are not delivered. The Court will not compel B to supply the goods if it does not wish to. A new contract is made and is allowed to be given effect here. Specific performance of the contract should be refused to B.

The following is a case in which the Court may properly exercise a discretion to decree specific performance —

III Where the plaintiff has done substantial acts or suffered losses in consequence of a contract capable of specific performance

(Part II —Of Specific Relief Chapter II —Of the Specific Performance of Contracts)

Illustration

A sells land to a railway company, who contract to execute certain works for his convenience. The company take the land and use it for their railway. Specific performance of the contract to execute the works should be decreed in favour of A.

(d) *For whom Contracts may be specifically enforced*

23 Except as otherwise provided by this Chapter, the specific performance of a contract may be obtained by—

Who may
obtain
specific
performance

- (a) any party thereto,
- (b) the representative in interest, or the principal, of any party thereto provided that, where the learning, skill, solvency or any personal quality of such party is a material ingredient in the contract, or where the contract provides that his interest shall not be assigned, his representative in interest or his principal shall not be entitled to specific performance of the contract, unless where his part thereof has already been performed,
- (c) where the contract is a settlement on marriage, or a compromise of doubtful rights between members of the same family, any person beneficially entitled thereunder
- (d) where the contract has been entered into by a tenant for life in due exercise of a power, the remainderman,
- (e) a reversioner in possession, where the agreement is a covenant entered into with his predecessor in title and the reversioner is entitled to the benefit of such covenant,
- (f) a reversioner in remainder, where the agreement is such a covenant, and the reversioner is entitled to the benefit thereof and will sustain material injury by reason of its breach,
- (g) when a public company has entered into a contract and subsequently becomes amalgamated with another public company, the new company which arises out of the amalgamation,
- (h) when the promoters of a public company have, before its incorporation, entered into a contract for the purposes of the company and such contract is warranted by the terms of the incorporation, the company

(Part II —Of Specific Relief Chapter II —Of the Specific Performance of Contracts)

(c) For whom Contracts cannot be specifically enforced

24 Specific performance of a contract cannot be enforced in favour of a person— Personal bars to the relief

- (a) who could not recover compensation for its breach
- (b) who has become incapable of performing or violates, any essential term of the contract that on his part remains to be performed
- (c) who has already chosen his remedy and obtained satisfaction for the alleged breach of contract or
- (d) who previously to the contract had notice that a settlement of the subject matter thereof (though not founded on any valuable consideration) had been made and was then in force

Illustrations—

to clause (a)—

A in the character of agent for B enters into an agreement with C to buy C's house. A is in reality acting not as agent for B but on his own account. A can not enforce specific performance of this contract

to clause (b)—

A contracts to sell B a house and to become tenant thereof for a term of fourteen years from the date of the sale at a specified yearly rent. A becomes insolvent. Neither he nor his assignee can enforce specific performance of the contract

A contracts to sell B a house and garden in which there are ornamental trees a material element in the value of the property as a residence. A without B's consent fells the trees. A cannot enforce specific performance of the contract

A holding land under a contract with B for a lease commits waste or treats the land in an unhusbandlike manner. A cannot enforce specific performance of the contract

A contracts to let and B contracts to take an unfinished house. B contracting to finish the house and the lease to contain covenants on the part of A to keep the house in repair. B finishes the house in a very defective manner. he cannot enforce the contract specifically though A and B may sue each other for compensation for breach of it

to clause (c)—

A contracts to let and B contracts to take a house for a specified term at a specified rent. B refuses to perform the contract. A thereupon sues for and obtains compensation for the breach. A cannot obtain specific performance of the contract

25 A contract for the sale or letting of property, whether moveable or immovable cannot be specifically enforced in favour of a vendor or lessor— Contracts to sell property by one who has no title or who is a voluntary settler

- (a) who knowing himself not to have any title to the property, has contracted to sell or let the same

(Part II — Of Specific Relief Chapter II — Of the Specific Performance of Contracts) .

- (b) who, though he entered into the contract believing that he had a good title to the property, cannot, at the time fixed by the parties or by the Court for the completion of the sale or letting, give the purchaser or lessee a title free from reasonable doubt,
- (c) who, previous to entering into the contract, has made a settlement (though not founded on any valuable consideration) of the subject-matter of the contract

Illustrations

(a) A, without C's authority, contracts to sell to B an estate which A knows to belong to C. A cannot enforce specific performance of this contract even though C is willing to confirm it.

(b) A bequeaths his land to trustees declaring that they may sell it with the consent in writing of P. B gives a general prospective assent in writing to any sale which the trustees may make. The trustees then enter into a contract with C to sell him the land. C refuses to carry out the contract. The trustees cannot specifically enforce this contract as in the absence of B's consent to the particular sale to C the title which they can give C is as the law stands not free from reasonable doubt.

(c) A being in possession of certain land contracts to sell it to Z. On inquiry it turns out that A claims the land as heir of B, who left the country several years before and is generally believed to be dead but of whose death there is no sufficient proof. A cannot compel Z specifically to perform the contract.

(d) A out of natural love and affection makes a settlement of certain property on his brothers and their issue and afterwards enters into a contract to sell the property to a stranger. A cannot enforce specific performance of this contract so as to override the settlement and thus prejudice the interests of the persons claiming under it.

(f) *For whom Contracts cannot be specifically enforced, except with a Variation*

26 Where a plaintiff seeks specific performance of a contract in writing, to which the defendant sets up a variation, the plaintiff cannot obtain the performance sought, except with the variation so set up, in the following cases (namely) —

- (a) where by fraud or mistake of fact the contract of which performance is sought is in terms different from that which the defendant supposed it to be when he entered into it,
- (b) where by fraud, mistake of fact, or surprise the defendant entered into the contract under a reasonable misapprehension as to its effect as between himself and the plaintiff,
- (c) where the defendant, knowing the terms of the contract and understanding its effect, has entered into it relying upon some misrepresentation by the plaintiff, or upon some stipulation on the plaintiff's part, which adds to the contract, but which he refuses to fulfil,

(Part II —Of Specific Relief Chapter II —Of the Specific Performance of Contracts)

(d) where the object of the parties was to produce a certain legal result, which the contract as framed is not calculated to produce,

(e) where the parties have, subsequently to the execution of the contract, contracted to vary it

Illustrations

(a) A B and C sign a writing by which they purport to contract each to enter into a bond to D for Rs 1000 In a suit by D to make A B and C separately liable each to the extent of Rs 1000 they prove that the word each was inserted by mistake that the intention was that they should give a joint bond for Rs 1000 D can obtain the performance sought only with the variation thus set up

(b) A sues B to compel specific performance of a contract in writing to buy a dwelling house B proves that he assumed that the contract included an adjoining yard and the contract was so framed as to leave it doubtful whether the yard was so included or not The Court will refuse to enforce the contract, except with the variation set up by B

(c) A contracts in writing to let to B a wharf together with a strip of A's land delineated in a map Before signing the contract, B proposed orally that he should be at liberty to substitute for the strip mentioned in the contract another strip of A's land of the same dimensions and to this A expressly assented B then signed the written contract A cannot obtain specific performance of the written contract except with the variation set up by B

(d) A and B enter into negotiations for the purpose of securing land for P for his life with remainder to his issue They execute a contract the terms of which are found to confer an absolute ownership on P The contract so framed cannot be specifically enforced

(e) A contracts in writing to let a house to B for a certain term at the rent of Rs 100 per month putting it first into tenantable repair The house turns out to be not worth repairing so with B's consent A pulls it down and erects a new house in its place B contracting orally to pay rent at Rs 120 per mensem B then sues to enforce specific performance of the contract in writing He cannot enforce it except with the variations made by the subsequent oral contract

(g) Against whom Contracts may be specifically enforced

27 Except as otherwise provided by this Chapter, specific performance of a contract may be enforced against—

Relief against parties and persons claiming under them by subsequent title.

(a) either party thereto,

(b) any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract,

(c) any person claiming under a title which, though prior to the contract and known to the plaintiff, might have been displaced by the defendant,

(d) when a public company has entered into a contract and subsequently becomes amalgamated with another public

(Part II —Of Specific Relief Chapter II —Of the Specific Performance of Contracts)

company, the new company which arises out of the amalgamation,

- (e) when the promoters of a public company have, before its incorporation, entered into a contract, the company provided that the company has ratified and adopted the contract and the contract is warranted by the terms of the incorporation

Illustrations—
to clause (b)—

A contracts to convey certain land to B by a particular day. A dies intestate before that day without having conveyed the land. B may compel A's heir or other representative in interest to perform the contract specifically.

A contracts to sell certain land to B for Rs 5000. A afterwards conveys the land for Rs 6000 to C who has notice of the original contract. B may enforce specific performance of the contract as against C.

A contracts to sell land to B for Rs 5000. B takes possession of the land. Afterwards A sells it to C for Rs 6000. C makes no inquiry of B relating to his interest in the land. B's possession is sufficient to affect C with notice of his interest and he may enforce specific performance of the contract against C.

A contracts in consideration of Rs 1000 to bequeath certain of his lands to B. Immediately after the contract A dies intestate and C takes out administration to his estate. B may enforce specific performance of the contract against C.

A contracts to sell certain land to B. Before the completion of the contract, A becomes a lunatic and C is appointed his committee. B may specifically enforce the contract against C.

to clause (c)—

A the tenant for life of an estate with remainder to B in due exercise of a power conferred by the settlement under which he is tenant for life contracts to sell the estate to C who has notice of the settlement. Before the sale is completed A dies. C may enforce specific performance of the contract against B.

A and B are joint tenants of land his undivided moiety of which either may alien in his lifetime but which subject to that right devolves on the survivor. A contracts to sell his moiety to C and dies. C may enforce specific performance of the contract against B.

Specific performance in case of part performance of contract to lease

1[27A Subject to the provisions of this Chapter, where a contract to lease immoveable property is made in writing signed by the parties thereto or on their behalf, either party may, notwithstanding that the contract though required to be registered has not been registered, sue the other for specific performance of the contract if,—

- (a) where specific performance is claimed by the lessor, he has delivered possession of the property to the lessee in part performance of the contract, and

- (b) where specific performance is claimed by the lessee he has in part performance of the contract, taken possession of the property, or being already in possession continues

(Part II —Of Specific Relief Chapter II —Of the Specific Performance of Contracts)

in possession in part performance of the contract and has done some act in furtherance of the contract

Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof

This section applies to contracts to lease executed after the first day of April 1930]

(h) *Against whom Contracts cannot be specifically enforced*

* 23 Specific performance of a contract cannot be enforced against a party thereto in any of the following cases —

What parties cannot be compelled to perform

(a) if the consideration to be received by him is so grossly inadequate with reference to the state of things existing at the date of the contract as to be either by itself or coupled with other circumstances evidence of fraud or of undue advantage taken by the plaintiff

(b) if his assent was obtained by the misrepresentation (whether wilful or innocent) concealment circumvention or unfair practices of any party to whom performance would become due under the contract or by any promise of such party which has not been substantially fulfilled

(b) if his assent was obtained by the misrepresentation (whether misapprehension or surprise) Provided that, when the contract provides for compensation in case of mistake, compensation may be made for a mistake within the scope of such provision and the contract may be specifically enforced in other respects if proper to be so enforced

Illustrations—

to clause (c)—

A one of two executors in the erroneous belief that he had the authority of the co-executor enters into an agreement for the sale to B of his testator's property B cannot insist on the sale being completed

A directs an auctioneer to sell certain land A afterwards revokes the auctioneer's authority as to 20 bighas of this land but the auctioneer inadvertently sells the whole to B who has no notice of the revocation B cannot enforce specific performance of the agreement

(i) *The effect of dismissing a Suit for Specific Performance*

29 The dismissal of a suit for specific performance of a contract or part thereof shall bar the plaintiff's right to sue for compensation for the breach of such contract or part as the case may be

Bar of suit for breach after dismissal.

(Part II —Of Specific Relief Chapter II —Of the Specific Performance of Contracts Chapter III —Of the Rectification of Instruments)

(g) Awards and Directions to execute Settlements

Application of preceding sections to awards and testamentary directions to execute settlements

30 The provisions of this Chapter as to contracts shall, *mutatis mutandis*, apply to awards and to directions in a will or codicil to execute a particular settlement

CHAPTER III

OF THE RECTIFICATION OF INSTRUMENTS

When instrument may be rectified

31 When, through fraud or a mutual mistake of the parties, a contract or other instrument in writing does not truly express their intention, either party, or his representative in interest, may institute a suit to have the instrument rectified and if the Court find it clearly proved that there has been fraud or mistake in framing the instrument, and ascertain the real intention of the parties in executing the same, the Court may in its discretion rectify the instrument so as to express that intention, so far as this can be done without prejudice to rights acquired by third persons in good faith and for value

Illustrations

(a) A intending to sell to B his house and one of three godowns adjacent to it, executes a conveyance prepared by B in which through B's fraud all three godowns are included. Of the two godowns which were fraudulently included B gives one to C and lets the other to D for a rent neither C nor D having any knowledge of the fraud. The conveyance may, as against B and C, be rectified so as to exclude from it the godown given to C but it cannot be rectified so as to affect D's lease.

(f) By a marriage settlement A the father of B the intended wife covenants with C the intended husband to pay to C his executors administrators and assigns, during A's life an annuity of Rs 5000. C dies insolvent and the official assignee claims the annuity from A. The Court on finding it clearly proved that the parties always intended that this annuity should be paid as a provision for B and her children may rectify the settlement and decree that the assignee has no right to any part of the annuity.

Presumption as to intent of parties

32 For the purpose of rectifying a contract in writing, the Court must be satisfied that all the parties thereto intended to make an equitable and conscientious agreement

Principles of rectification

33 In rectifying a written instrument, the Court may inquire what the instrument was intended to mean, and what were intended to be its legal consequences and is not confined to the inquiry what the language of the instrument was intended to be

Specific enforcement of rectified contract

34 A contract in writing may be first rectified and then, if the plaintiff has so prayed in his plaint and the Court thinks fit, specifically enforced

Illustration

A contracts in writing to pay his attorney, B, a fixed sum in lieu of costs. The contract contains mistakes as to the name and rights of the client which if construed strictly would exclude B from all rights under it. B is entitled if the Court thinks fit to have it rectified and to an order for payment of the sum as if at the time of its execution it had expressed the intention of the parties.

(Part II —Of Specific Relief. Chapter IV —Of the Rescission of Contracts)

CHAPTER IV

OF THE RESCISSION OF CONTRACTS

35 Any person interested in a contract in writing¹ may sue to have it rescinded, and such rescission may be adjudged by the Court in any of the following cases, namely — When rescission may be adjudged.

- (a) where the contract is voidable or terminable by the plaintiff,
- (b) where the contract is unlawful for causes not apparent on its face, and the defendant is more to blame than the plaintiff;
- (c) where a decree for specific performance of a contract of sale, or of a contract to take a lease, has been made, and the purchaser or lessee makes default in payment of the purchase-money or other sums which the Court has ordered him to pay

When the purchaser or lessee is in possession of the subject matter, and the Court finds that such possession is wrongful, the Court may also order him to pay to the vendor or lessor the rents and profits, if any, received by him as such possessor

In the same case, the Court may, by order in the suit in which the decree has been made and not complied with, rescind the contract, either so far as regards the party in default, or altogether, as the justice of the case may require

Illustrations—

to (a)—

A sells a field to B. There is a right of way over the field of which A has direct personal knowledge but which he conceals from B. B is entitled to have the contract rescinded.

to (b)—

A, an attorney, induces his client B, a Hindu widow, to transfer property to him for the purpose of defrauding B's creditors. Here the parties are not equally in fault, and B is entitled to have the instrument of transfer rescinded.

36 Rescission of a contract in writing¹ cannot be adjudged for mere mistake, unless the party against whom it is adjudged can be restored to substantially the same position as if the contract had not been made Rescission for mistake.

37. A plaintiff instituting a suit for the specific performance of a contract in writing may pray in the alternative that, if the contract cannot be specifically enforced, it may be rescinded and delivered up to be cancelled, and the Court, if it refuses to enforce the contract specifically, may direct it to be rescinded and delivered up accordingly Alternative prayer for rescission in suit for specific performance.

¹ The words 'in writing' are rep. wherever the Transfer of Property Act, 1882 (4 of 1882), is in force, see ss 1 and 2 of that Act

(Part II—Of Specific Relief Chapter IV—Of the Rescission of Contracts Chapter V—Of the Cancellation of Instruments)

Court may require party rescinding to do equity

38 On adjudging the rescission of a contract, the Court may require the party to whom such relief is granted to make any compensation to the other which justice may require

CHAPTER V

OF THE CANCELLATION OF INSTRUMENTS

When cancellation may be ordered

39 Any person against whom a written instrument is void or voidable, who has reasonable apprehension that such instrument, if left outstanding may cause him serious injury, may sue to have it adjudged void or voidable and the Court may, in its discretion, so adjudge it and order it to be delivered up and cancelled

If the instrument has been registered under the Indian Registration Act,¹ the Court shall also send a copy of its decree to the officer in whose office the instrument has been so registered, and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation

Illustrations

(a) A the owner of a ship by fraudulently representing her to be seaworthy, induces B an underwriter to insure her B may obtain the cancellation of the policy

(b) A conveys land to B who bequeaths it to C and dies Thereupon D gets possession of the land and produces a forged instrument stating that the conveyance was made to B in trust for him C may obtain the cancellation of the forged instrument

(c) A representing that the tenants on his land were all at will sells it to B and conveys it to him by an instrument dated the 1st January 1877 Soon after that day A fraudulently grants to C a lease of part of the lands dated the 1st October 1876 and procures the lease to be registered under the Indian Registration Act¹ B may obtain the cancellation of this lease

(d) A agrees to sell and deliver a ship to B to be paid for by B's acceptances of four bills of exchange for sums amounting to Rs 30,000 to be drawn by A on B The bills are drawn and accepted but the ship is not delivered according to the agreement A sues B on one of the bills B may obtain the cancellation of all the bills

What instruments may be partially cancelled

40 Where an instrument is evidence of different rights or different obligations, the Court may, in a proper case, cancel it in part and allow it to stand for the residue

Illustration

A draws a bill on B who endorses it to C by whom it appears to be endorsed to D who endorses it to F C's endorsement is forged C is entitled to have such endorsement cancelled leaving the bill to stand in other respects

Power to require party for whom instrument is cancelled to make compensation

41 On adjudging the cancellation of an instrument, the Court may require the party to whom such relief is granted to make any compensation to the other which justice may require

¹ See now the Indian Registration Act 1908 (16 of 1908)

(Part II—Of Specific Relief Chapter VI—Of Declaratory Decrees)

CHAPTER VI

OF DECLARATORY DECREES

42 Any person entitled to any legal character or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right and the Court may in its discretion make therein a declaration that he is so entitled and the plaintiff need not in such suit ask for any further relief

Discretion of Court as to declaration of status or right

Provided that no Court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so

Bar to such declaration.

Explanation—A trustee of property is a "person interested to deny" a title adverse to the title of some one who is not in existence, and for whom, if in existence, he would be a trustee

Illustrations

(a) A is lawfully in possession of certain land. The inhabitants of a neighbouring village claim a right of way across the land. A may sue for a declaration that they are not entitled to the right so claimed

(b) A bequeaths his property to B, C and D, to be equally divided amongst all and each of them if living at the time of my death then amongst their surviving children. No such children are in existence. In a suit against A as executor, the Court may declare whether B, C and D took the property absolutely, or only for their lives and it may also declare the interests of the children before their rights are tested

(c) A covenants that, if he should at any time be entitled to property exceeding one lakh of rupees he will settle it upon certain trusts. Before any such property accrues, or any persons entitled under the trusts are ascertained he institutes a suit to obtain a declaration that the covenant is void for uncertainty. The Court may make the declaration

(d) A alienates to B property in which A has merely a life interest. The alienation is invalid as against C who is entitled as reversioner. The Court may in a suit by C against A and B declare that C is so entitled

(e) The widow of a sonless Hindu alienates part of the property of which she is in possession as such. The person presumptively entitled to possess the property if he survive her may, in a suit against the alienee, obtain a declaration that the alienation was made without legal necessity and was therefore void beyond the widow's lifetime

(f) A Hindu widow in possession of property adopts a son to her deceased husband. The person presumptively entitled to possession of the property on her death without a son may, in a suit against the adopted son, obtain a declaration that the adoption was invalid

(g) A is in possession of certain property. B alleging that he is the owner of the property, requires A to deliver it to him. A may obtain a declaration of his right to hold the property

(h) A bequeaths property to B for his life with remainder to B's wife and her children, if any, by B but if B die without any wife or children, to C. B has a putative wife, D and children, but C denies that B and D were ever lawfully married. D and her children may, in B's lifetime institute a suit against C and obtain therein a declaration that they are truly the wife and children of B

(Part II—Of Specific Relief Chapter IV—Of the Rescission of Contracts Chapter V—Of the Cancellation of Instruments)

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(Part II.—Of Specific Relief Chapter VI—Of Declaratory Decrees.)

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OF DECLARATORY DECREES

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Provided that no Court shall make any such declaration where the plaintiff being able to seek further relief than a mere declaration of title, omits to do so

Explanation—A trustee of property is a person interested to deny a title adverse to the title of some one who is not in existence, and for whom, if in existence, he would be a trustee

Illustrations

(a) A is lawfully in possession of certain land. The inhabitants of a neighbouring village claim a right of way across the land. A may sue for a declaration that they are not entitled to the right so claimed.

(b) A bequeaths his property to B, C and D to be equally divided amongst all and each of them if living at the time of my death then amongst their surviving children. No such children are in existence. In a suit against A's executor, the Court may declare whether B, C and D took the property absolutely or only for their lives and it may also declare the interests of the children before their rights are vested.

(c) A covenants that if he should at any time be entitled to property exceeding one lakh of rupees he will settle it upon certain trusts. Before any such property accrues or any persons entitled under the trusts are ascertained he institutes a suit to obtain a declaration that the covenant is void for uncertainty. The Court may make the declaration.

(d) A alienates to B property in which A has merely a life interest. The alienation is invalid as against C who is entitled in reversion. The Court may in a suit by C against A and B declare that C is so entitled.

(e) The widow of a sonless Hindu alienates part of the property of which she is in possession as such. The person presumptively entitled to possess the property if he survive her may in a suit against the alienee obtain a declaration that the alienation was made without legal necessity and was therefore void beyond the widow's lifetime.

(f) A Hindu widow in possession of property adopts a son to her deceased husband. The person presumptively entitled to possession of the property on her death without a son may in a suit against the adopted son obtain a declaration that the adoption was invalid.

(g) A is in possession of certain property. B alleging that he is the owner of the property, requires A to deliver it to him. A may obtain a declaration of his right to hold the property.

(h) A bequeaths property to B for his life with remainder to B's wife and her children if any, by B, but if B die without any wife or children, to C. B has a putative wife, D and children, but C denies that B and D were ever lawfully married. D and her children may, in B's lifetime institute a suit against C and obtain a declaration that they are truly the wife and children of B.

(Part II—Of Specific Relief. Chapter VI—Of Declaratory Decrees
Chapter VII—Of the Appointment of Receivers Chapter VIII—
Of the Enforcement of Public Duties)

Effect of
declaration

43 A declaration made under this Chapter is binding only on the parties to the suit, persons claiming through them respectively, and, where any of the parties are trustees, on the persons for whom, if in existence at the date of the declaration, such parties would be trustees

Illustration

A Hindu in a suit to which B his alleged wife and her mother, are defendant seeks a declaration that his marriage was duly solemnized and an order for the restitution of his conjugal rights The Court makes the declaration and order C, claiming that B is his wife then sues A for the recovery of B The declaration made in the former suit is not binding upon C

CHAPTER VII

OF THE APPOINTMENT OF RECEIVERS

Appointment
of receivers
discretionary

44 The appointment of a receiver pending a suit is a matter resting in the discretion of the Court

Reference to
Code of Civil
Procedure

The mode and effect of his appointment, and his rights, powers, duties and liabilities, are regulated by the Code of Civil Procedure¹

CHAPTER VIII

OF THE ENFORCEMENT OF PUBLIC DUTIES

Power to
order public
servants and
others to do
certain
specific
acts

45 Any of the High Courts of Judicature at²[Calcutta, Madras and Bombay] may make an order requiring any specific act to be done or forborne within the local limits of its ordinary original civil jurisdiction, by any person holding a public office whether of a permanent or a temporary nature, or by any corporation or inferior Court of Judicature

Provided—

(a) that an application for such order be made by some person whose property, franchise or personal right would be injured by the forbearing or doing (as the case may be) of the said specific act

(b) that such doing or forbearing is, under any law for the time being in force, clearly incumbent on such person or Court in his or its public character, or on such corporation in its corporate character,

¹ See now the Code of Civil Procedure 1903 (Act 5 of 1908)

² Subs by the A O for Fort William Madras [Bombay and Rangoon] The words in brackets were subs for and Bombay by the Repealing and Amending Act 1923 (11 of 1923)

(Part II—Of Specific Relief Chapter VIII—Of the Enforcement of Public Duties)

- (c) that in the opinion of the High Court such doing or forbearing is consonant to right and justice
- (d) that the applicant has no other specific and adequate legal remedy, and
- (e) that the remedy given by the order applied for will be complete

Nothing in this section shall be deemed to authorize any High Court—

- (f) to make any order binding on the Secretary of State, the Central Government the Crown Representative or any Provincial Government]
- (g) to make any order on any other servant of the Crown as such, merely to enforce the satisfaction of a claim upon the Crown, or
- (h) to make any order which is otherwise expressly excluded by any law for the time being in force

46 Every application under section 41 must be founded on an affidavit of the person injured stating his right in the matter in question his demand of justice and the denial thereof and the High Court may in its discretion make the order applied for absolute in the first instance or refuse it or grant a rule to show cause why the order applied for should not be made

Application how made

Procedure thereon

If in the last case, the person Court or corporation complained of shows no sufficient cause the High Court may first make an order in the alternative either to do or forbear the act mentioned in the order or to signify some reason to the contrary and make in answer thereto by such day as the High Court fixes in this behalf

Order in alternative

47 If the person Court or corporation to whom or to which such order is directed makes no answer or makes an insufficient or a false answer the High Court may then issue a peremptory order to do or forbear the act absolutely

Peremptory order

48 Every order under this Chapter shall be executed and may be appealed from as if it were a decree made in the exercise of the ordinary original civil jurisdiction of the High Court

Execution of and appeal from, orders

1 Substituted by the A. O. for the original clause which commenced by the Bengal Bihar and Orissa and Assam Laws Act 1912 (7 of 1912) s. 7 and Sch. E and the Repealing and Amending Act 1927 (10 of 1927) s. 2 and Sch. I read to make any order binding on the Secretary of State for India in Council or the Governor-General in Council or the Governor of Madras in Council or the Governor of Bombay in Council or the Governor in Council of Fort William in Bengal or on the Governor of Burma in Council

(Part II —Of Specific Relief Chapter VIII —Of the Enforcement of Public Duties Part III —Of Preventive Relief. Chapter IX —Of Injunctions generally Chapter X —Of Perpetual Injunctions)

Costs 49 The costs of all applications and orders under this Chapter shall be in the discretion of the High Court

Bar to issue of mandamus 50 Neither the High Court nor any Judge thereof shall hereafter issue any writ of *mandamus*

Power to frame rules 51 Each of the said High Courts shall as soon as conveniently may be frame rules to regulate the procedure under this Chapter and until such rules are framed the practice of such Court as to applications for and grants of writs of *mandamus* shall apply so far as may be practicable to applications and orders under this Chapter

PART III

OF PREVENTIVE RELIEF

CHAPTER IX

OF INJUNCTIONS GENERALLY

Preventive relief how granted 52 Preventive relief is granted at the discretion of the Court by injunction temporary or perpetual

Temporary injunctions 53 Temporary injunctions are such as are to continue until a specified time or until the further order of the Court They may be granted at any period of a suit and are regulated by the Code of Civil Procedure¹

Perpetual injunctions A perpetual injunction can only be granted by the decree made at the hearing and upon the merits of the suit the defendant is thereby perpetually enjoined from the assertion of a right or from the commission of an act, which would be contrary to the rights of the plaintiff

CHAPTER X

OF PERPETUAL INJUNCTIONS

Perpetual injunctions when granted 54 Subject to the other provisions contained in or referred to by this Chapter a perpetual injunction may be granted to prevent the breach of an obligation existing in favour of the applicant whether expressly or by implication

When such obligation arises from contract the Court shall be guided by the rules and provisions contained in Chapter II of this Act

¹ See now the Code of Civil Procedure 1903 (Act 5 of 1908)

(Part III—Of Preventive Relief Chapter X—Of Perpetual Injunctions)

When the defendant invades or threatens to invade the plaintiff's right to, or enjoyment of, property, the Court may grant a perpetual injunction in the following cases (namely) —

- (a) where the defendant is trustee of the property for the plaintiff,
- (b) where there exists no standard for ascertaining the actual damage caused, or likely to be caused, by the invasion;
- (c) where the invasion is such that pecuniary compensation would not afford adequate relief,
- (d) where it is probable that pecuniary compensation cannot be got for the invasion,
- (e) where the injunction is necessary to prevent a multiplicity of judicial proceedings

Explanation —For the purpose of this section a trademark is property.

Illustrations

- (a) A lets certain lands to B and B contracts not to dig sand or gravel thereout A may sue for an injunction to restrain B from digging in violation of his contract
- (b) A trustee threatens a breach of trust His co-trustees if any, should, and the beneficial owners may, sue for an injunction to prevent the breach
- (c) The directors of a public company are about to pay a dividend out of capital or borrowed money Any of the shareholders may sue for an injunction to restrain them
- (d) The directors of a fire and life insurance company are about to engage in marine insurances Any of the shareholders may sue for an injunction to restrain them
- (e) A, an executor, through misconduct or insolvency is bringing the property of the deceased into danger The Court may grant an injunction to restrain him from getting in the assets
- (f) A, a trustee for B, is about to make an imprudent sale of a small part of the trust property B may sue for an injunction to restrain the sale even though compensation in money would have afforded him adequate relief
- (g) A makes a settlement (not founded on marriage or other valuable consideration) of an estate on B and his children A then contracts to sell the estate to C B or any of his children may sue for an injunction to restrain the sale
- (h) In the course of A's employment as a vakil certain papers belonging to his client B come into his possession A threatens to make the papers public, or to communicate their contents to a stranger B may sue for an injunction to restrain A from so doing
- (i) A is B's medical adviser He demands money of B which B declines to pay A then threatens to make known the effect of B's communications to him as a patient This is contrary to A's duty and B may sue for an injunction to restrain him from so doing
- (j) A, the owner of two adjoining houses lets one to B and afterwards lets the other to C A and C begin to make such alterations in the house let to C as will prevent the comfortable enjoyment of the house let to B B may sue for an injunction to restrain them from so doing
- (k) A lets certain arable lands to B for purposes of husbandry but without any express contract as to the mode of cultivation Contrary to the mode of cultivation customary in the district B threatens to sow the lands with seed injurious thereto

1 A Railway Company may however pay interest on its paid up share capital out of capital for a certain period and subject to certain restrictions and conditions see the Indian Railway Companies Act 1895 (10 of 1895) s. 3

(Part III —Of Preventive Relief Chapter X —Of Perpetual Injunctions)

and requiring many years to eradicate. A may sue for an injunction to restrain B from sowing the lands in contravention of his implied contract to use them in a husbandlike manner.

(l) A, B and C are partners, the partnership being determinable at will. A threatens to do an act tending to the destruction of the partnership property. B and C may, without seeking a dissolution of the partnership, sue for an injunction to restrain A from doing the act.

(m) A, a Hindu widow in possession of her deceased husband's property, commits destruction of the property without any cause sufficient to justify her in so doing. The heir expectant may sue for an injunction to restrain her.

(n) A, B and C are members of an undivided Hindu family. A cuts timber growing on the family property, and threatens to destroy part of the family house and to sell some of the family utensils. B and C may sue for an injunction to restrain him.

(o) A, the owner of certain houses in Calcutta, becomes insolvent. B buys them from the Official Assignee and enters into possession. A persists in trespassing on and damaging the houses, and B is thereby compelled, at considerable expense, to employ men to protect the possession. B may sue for an injunction to restrain further acts of trespass.

(p) The inhabitants of a village claim a right of way over A's land. In a suit against several of them, A obtains a declaratory decree that his land is subject to no such right. Afterwards each of the other villagers sues A for obstructing his alleged right of way over the land. A may sue for an injunction to restrain them.

(q) A, in an administration suit to which a creditor, B, is not a party, obtains a decree for the administration of C's assets. B proceeds against C's estate for his debt. A may sue for an injunction to restrain B.

(r) A and B are in possession of contiguous lands and of the mines underneath them. A works his mine so as to extend under B's mine and threatens to remove certain pillars which help to support B's mine. B may sue for an injunction to restrain him from so doing.

(s) A rings bells or makes some other unnecessary noise so near a house as to interfere materially and unreasonably with the physical comfort of the occupier, B. B may sue for an injunction restraining A from making the noise.

(t) A pollutes the air with smoke so as to interfere materially with the physical comfort of B and C, who carry on business in a neighbouring house. B and C may sue for an injunction to restrain the pollution.

(u) A infringes B's patent. If the Court is satisfied that the patent is valid and has been infringed, B may obtain an injunction to restrain the infringement.

(v) A pirates B's copyright. B may obtain an injunction to restrain the piracy, unless the work of which copyright is claimed is libellous or obscene.

(w) A improperly uses the trademark of B. B may obtain an injunction to restrain the user, provided that B's use of the trademark is honest.

(x) A, a tradesman, holds out B as his partner against the wish and without the authority of B. B may sue for an injunction to restrain A from so doing.

(y) A, a very eminent man, writes letters on family topics to B. After the death of A and B, C, who is B's residuary legatee, proposes to make money by publishing A's letters. D, who is A's executor, has a property in the letters, and may sue for an injunction to restrain C from publishing them.

(z) A carries on a manufacture and B is his assistant. In the course of his business, A imparts to B a secret process of value. B afterwards demands money of A, threatening, in case of refusal, to disclose the process to C, a rival manufacturer. A may sue for an injunction to restrain B from disclosing the process.

55 When, to prevent the breach of an obligation, it is necessary to compel the performance of certain acts which the Court is capable of

1 As to the working of mines under land the surface of which has been acquired by Government, see the Land Acquisition (Mines) Act, 1885 (18 of 1885).

(Part III—Of Preventive Relief Chapter X—Of Perpetual Injunctions)

enforcing, the Court may in its discretion grant an injunction to prevent the breach complained of, and also to compel performance of the requisite acts

Illustrations

(a) A, by new buildings obstructs lights to the access and use of which B has acquired a right under the Indian Easement Act 1 Part IV. B may obtain an injunction, not only to restrain A from going on with the buildings, but also to pull down so much of them as obstructs B's lights

(b) A builds a house with eaves projecting over B's land. B may sue for an injunction to pull down so much of the eaves as so project

(c) In the case put as illustration (i) to section 54 the Court may also order all written communications made by B as patient, to A, as medical adviser, to be destroyed

(d) In the case put as illustration (y) to section 54, the Court may also order A's letters to be destroyed

60. (e) A threatens to publish statements concerning B which would be punishable under Chapter XXI of the Indian Penal Code. The Court may grant an injunction to restrain the publication even though it may be shown not to be injurious to B's property

(f) A being B's medical adviser threatens to publish B's written communications with him, showing that B has led an immoral life. B may obtain an injunction to restrain the publication

(g) In the cases put as illustrations (c) and (f) to section 54 and in illustrations (e) and (f) to this section the Court may also order the copies produced by piracy, and the trademarks, statements and communications therein respectively mentioned, to be given up or destroyed

56 An injunction cannot be granted—

Injunction
when
refused

(a) to stay a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent a multiplicity of proceedings,

(b) to stay proceedings in a Court not subordinate to that from which the injunction is sought,

(c) to restrain persons from applying to any legislative body

(d) to interfere with the public duties of any department of
2[the Central Government the Crown Representative or
any Provincial Government] or with the sovereign acts
of a Foreign Government

(e) to stay proceedings in any criminal matter

(f) to prevent the breach of a contract the performance of which would not be specifically enforced,

(g) to prevent on the ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance,

(h) to prevent a continuing breach in which the applicant has acquiesced,

(i) when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust,

1 See now the Indian Easement Act, 1903 (9 of 1903)

2 Subs. by the A.O. for the G.O. of 10 the L.G.

(Part III—Of Preventive Relief Chapter X—Of Perpetual Injunctions)

- (j) when the conduct of the applicant or his agents has been such as to disentitle him to the assistance of the Court,
- (k) where the applicant has no personal interest in the matter.

Illustrations

(a) A seeks an injunction to restrain his partner, B from receiving the partner's debts and effects. It appears that A had improperly possessed himself of the books of the firm and refused B access to them. The Court will refuse the injunction.

(b) A manufactures and sells crucibles designating them as 'patent plumbago crucibles,' though, in fact they have never been patented. B pirates the designation. A cannot obtain an injunction to restrain the piracy.

(c) A sells an article called Mexican Balm," stating that it is compounded of divers rare essences, and has sovereign medicinal qualities. B commences to sell a similar article to which he gives a name and description such as to lead people into the belief that they are buying A's Mexican Balm. A sues B for an injunction to restrain the sale. B shows that A's Mexican Balm consists of nothing but scented hog lard. A's use of his description is not an honest one and he cannot obtain an injunction.

Injunction to perform negative agreement

57 Notwithstanding section 56, clause (f), where a contract comprises an affirmative agreement to do a certain act, coupled with a negative agreement, express or implied, not to do a certain act, the circumstance that the Court is unable to compel specific performance of the affirmative agreement shall not preclude it from granting an injunction to perform the negative agreement provided that the applicant has not failed to perform the contract so far as it is binding on him.

Illustrations

(a) A contracts to sell to B for Rs 1,000 the good will of a certain business unconnected with business premises and further agrees not to carry on that business in Calcutta. B pays A the Rs 1,000 but A carries on the business in Calcutta. The Court cannot compel A to send his customers to B but B may obtain an injunction restraining A from carrying on the business in Calcutta.

(b) A contracts to sell to B the good will of a business. A then sets up a similar business close by B's shop and solicits his old customers to deal with him. This is contrary to his implied contract, and B may obtain an injunction to restrain A from soliciting the customers and from doing any act whereby their good will may be withdrawn from B.

(c) A contracts with B to sing for twelve months at B's theatre and not to sing in public elsewhere. B cannot obtain specific performance of the contract to sing, but he is entitled to an injunction restraining A from singing at any other place of public entertainment.

(d) B contracts with A that he will serve him faithfully for twelve months as a clerk. A is not entitled to a decree for specific performance of this contract. But he is entitled to an injunction restraining P from serving a rival house as a clerk.

(e) A contracts with B that in consideration of Rs 1,000 to be paid to him by B on a day fixed, he will not set up a certain business within a specified distance. B fails to pay the money. A cannot be restrained from carrying on the business within the specified distance.

SCHEDULE—[Enactments Repealed] Rep by the Amending Act, 1891 (XII of 1891)

1877: Act IV.] *Presidency Magistrates (Court-fees)* 367

1877: Act IX] *Punjab Murderous Outrages (Amendment)*

**¹[THE PRESIDENCY MAGISTRATES (COURT-FEES)
ACT, 1877]**

ACT No IV OF 1877

[28th February 1877]

**An Act to regulate the procedure and increase the jurisdiction
of the Courts of Magistrates in the Presidency-towns**

WHEREAS it is expedient to consolidate and amend the law regulating the procedure of the Courts of Magistrates in the Presidency-towns and to increase the jurisdiction of such Courts, It is hereby enacted as follows*— Preamble

1 to 56. *Rep by the Code of Criminal Procedure 1882 (Act X of 1882)*

57 A fee of eight annas shall be paid for every summons or warrant issued by a Presidency Magistrate except in the case of a summons to attend and give evidence or to produce documents in which case they shall be paid a fee of four annas Fees for summonses and warrants

Provided that such Magistrate may in any case remit any such fee, if he is satisfied that the complainant is unable to pay the same and shall remit it when the complaint is made by a public servant in the execution of his duty Power to remit fees

58 to end *Rep by the Code of Criminal Procedure 1882 (Act X of 1882)*

THE PUNJAB MURDEROUS OUTRAGES (AMENDMENT) ACT 1877

ACT No IX OF 1877

[28th March 1877]

An Act to revive and amend Act No XXIII of 1867

WHEREAS Act No XXIII of 1867 (*for the suppression of murderous outrages in certain districts of the Punjab*) received the assent of the Preamble

¹ Short title given by the Indian Short Titles Act, 1897 (14 of 1897)

For the Statement of Objects and Reasons see Gazette of India 1874 Pt V p 83 for the Report of the Select Committee see *ibid*, 1875 Pt V p 39, and *ibid*, 1876, Pt V, p 37, for the discussions in Council see *ibid* 1874 Supplement, p 418, *ibid*, 1876, Supplement pp 193 and 709 *ibid* 1877, Supplement, p 497

Broach and Kaira Incumbered Estates [1877 Act XIV

Governor General on the 18th day of March 1867, and by section 17 of the said Act was limited to expire in ten years from the date of passing it And whereas it is expedient to revive the same Act and to amend it in manner hereinafter appearing It is hereby enacted as follows —

Act XVIII
of 1867 to be
revived

1 The said Act shall be revived and shall remain in force until the [Central Government] otherwise directs

2 [Amendment of Act XVIII of 1867] Rep by the Repealing Act 1938 (I of 1938) s 2 and Sch

2[THE BROACH AND KAIRA INCUMBERED ESTATES ACT, 1877]

ACT No XIV of 1877

[28th June 1877]

An Act to relieve from incumbrances the estates of Thakurs in Broach and Kaira

Preamble Rep by the Broach and Kaira Incumbered Estates Act 1881 (XXI of 1881)

1 to 38 [Application and preliminary inquiry Order of management Proof of debts Scheme for liquidation Proceedings subsequent to sanction of liquidation scheme Appeal and revision Miscellaneous] Rep by the Broach and Kaira Incumbered Estates Act 1881 (XXI of 1881)

Amendment
of Bombay
Act VI of
1862

39 3* Whereas doubts have been raised as to the validity of Bombay Act No VI of 1862 (for the amelioration of the condition of taluqdars in the Ahmedabad Collectorate and for their relief from debt) so far as it purports to affect the High Court of Judicature at Bombay

for the purpose of precluding such doubts it is hereby 4* enacted that the said Act so far as it purports to affect the said High Court, shall be deemed to be and to have been valid

Taluqdari
Settlement
officer to
be—

40 5[The Taluqdari Settlement officer mentioned in the Broach and Kaira Incumbered Estates Act 1881 section 7] for the time being, shall unless the 6[Provincial Government] in any case otherwise directs be—

XXI
1881

deemed to
be officer
Bombay Act

(a) deemed to be an officer appointed under section 1 of the said Bombay Act No VI of 1862 to manage all estates with respect

1 Subs 1 the A O for G G 11 G

2 Short title given by the Bombay Short Titles Act 1921 (Bon 2 of 1921) For Statement of Objects and Reasons see Gazette of India 1877 Pt V p 16 and for Proceedings Council see I I Supplement pp 87 126 and 1863

3 The word "and" rep by the Amendment Act 1894 (4 of 1894)

4 The word "further" rep I I

5 Subs 1 by the Broach and Kaira Incumbered Estates Act 1881 (21 of 1881) s 2 for The Taluqdari Settlement officer

6 Subs 1 by the A O for G G 11 G

1878: Act I.]

Opium

pect to which a declaration is or has been made and published under the said section, VI of 1862, section 1,

(b) an assistant to the respective Collectors of Ahmedabad, Kaira and Broach, assistant to certain Collectors

41 Nothing heretofore done by any Taluqdari Settlement officer shall be deemed to be or to have been invalid by reason only of his not having been duly appointed — Acts of Taluqdari Settlement officer valid

(a) under section 1 of the said Bombay Act No VI of 1862 to manage any estates with respect to which a declaration has been made under the said section, or

(b) to be a manager under¹ * * 2 Act No XV of 1871 or

(c) to be an assistant to the respective Collectors of Ahmedabad Kaira and Broach

THE OPIUM ACT 1878

CONTENTS

PREFACE

SCTIONS

- 1 Short title
- 2 Local extent
- 3 Commencement
- 4 [Repealed]
- 5 Interpretation clause
- 6 Prohibition of poppy cultivation and possession etc of opium
- 7 Power to make rules to permit such matters
- 8 [Repealed]
- 9 Warehousing opium
- 10 Power to make rules relating to warehouses
- 11 Penalty for illegal cultivation of poppy etc
- 12 Presumption in prosecutions under section 9
- 13 Confiscation of opium

¹ The words "the said" replaced by the Amending Act 1894 (4 of 1894)

² Paragraph 2 of this Act

SECTIONS

- 12 Order of confiscation by whom to be made
- 13 Power to make rules regarding disposal of things confiscated, and rewards
- 14 Power to enter, arrest and seize, on information that opium is unlawfully kept in any enclosed place
- 15 Power to seize opium in open places
Power to detain search and arrest
- 16 Searches how made
- 17 Officers to assist each other
- 18 Vexatious entries searches seizures and arrests
- 19 Issue of warrants
- 20 Disposal of person arrested or thing seized
- 21 Report of arrests and seizures
- 22 [*Repealed*]
- 23 Recovery of arrears of fees, duties, etc
- 24 Farmer may apply to Collector or other officer to recover amount due to him by licensee
- 25 Recovery of penalties due under bond

SCHEDULE — [*Repealed*]

ACT No I OF 1878 ¹

[9th January 1878]

An Act to amend the law relating to Opium

Preamble

WHEREAS it is expedient to amend the law relating to opium, It is hereby enacted as follows —

Short title

1 This Act may be called the Opium Act, 1878

¹ For the Statement of Objects and Reasons see Gazette of India 1877 Pt V, p 645 for Proceedings in Council see *ibid* Supplement pp 3015 and 3030 *ibid*, 1878 pp 53 and 80

The Act has been declared to be in force in the Sonthal Parganas by the Sonthal Parganas Settlement Regulation 1872 (3 of 1872) s 3 in British Baluchistan by the Baluchistan Laws Regulation 1913 (2 of 1913) s 3 in the Khondmala District by the Khondmala Laws Regulation 1936 (4 of 1936) s 3 and Sch and in the Angul District by the Angul Laws Regulation 1936 (5 of 1936) s 3 and Sch

It shall extend to such local areas¹ as the ²[Provincial Government] may, by notification in the ³[Official Gazette], from time to time direct, Local extent

And it shall come into force in each of such areas on such day as the ²[Provincial Government] in like manner directs in this behalf Commencement

2 [Repeal and amendment of enactments] Rep by the Amending Act 1891 (VII of 1891), and the Amending Act 1894 (IV of 1894)

43 In this Act, unless there be something repugnant in the subject or context,— Interpretation clause

5[opium means—

(i) the capsules of the poppy (*Papaver somniferum* L.)

(ii) the spontaneously coagulated juice of such capsules which has not been submitted to any manipulations other than those necessary for packing and transport and

(iii) any mixture with or without neutral materials of any of the above forms of opium,

but does not include any preparation containing not more than 0.2 per cent of morphine or a manufactured drug as defined in section 2 of the Dangerous Drugs Act 1930]

6 Magistrate means in the Presidency towns a Presidency Magistrate, and elsewhere a Magistrate of the first class or (when specially empowered ⁷by the ⁸[Provincial Government] to try cases under this Act) a Magistrate of the second class

¹ It has been so extended to the following local areas from the date specified against each —

(1) Ajmer Merwara from 2nd August 1879 see Gazette of India 1879 p 466,

(2) Assam from 1st April 1879 see *ibid* 1879 p 259

(3) Bengal from 21st August 1878 see *ibid* 1878 p 526

(4) Bombay Presidency from 1st April 1878 see *ibid* 1878 p 231

(5) Central Provinces from 26th June 1879 see *ibid* 1879 p 441

(6) Coorg from 1st April 1880 see *ibid* 1880 Pt I p 135

(7) Madras Presidency from 1st July 1880 see *ibid* 1880 Pt I p 513

(8) Punjab from 1st April 1880 see *ibid* 1880 Pt I p 16 and

(9) United Provinces from 2nd February 1878 see *ibid* 1878 Pt I p 68.

² Subs by the A O for G G in C

³ Subs by the A O for Gazette of India

⁴ For definition of the term Officer in charge of a police station for the Presidency of Bombay see the Opium (Amendment) Act 1923 (Bom 2 of 1923)

⁵ Subs by the Dangerous Drugs Act 1930 (2 of 1930) s 40 and Sch II for original definition

⁶ Cf definition in the last clause of s 3 of the Code of Criminal Procedure, 1898 (5 of 1898)

⁷ For notification empowering Magistrates of the second class to try cases under this Act see Mad R and O

⁸ Subs by the A O for L G

¹[import means to import inter provincially as defined in clause (j) of section 2 of the Dangerous Drugs Act 1930] II

export means to export inter provincially, as defined in clause (l) of section 2 of the Dangerous Drugs Act 1930 and] II

transport means to remove from one place to another within the territories administered by the same ²[Provincial Government]

³[sale does not include sales for export across customs frontiers⁴ as defined by the Central Government and 'sell shall be construed accordingly]

4 Except as permitted by this Act or by any other enactment relating to opium for the time being in force or by rules framed under this Act or under any such enactment no one shall—

5* * * *

(a) possess opium

(b) transport opium

(c) import or export opium or

(d) sell opium

5 The ²[Provincial Government] 6* * * * may from time to time by notification in the ⁷[Official Gazette] make rules consistent with this Act to permit absolutely or subject to the payment of duty or to any other conditions and to regulate within the whole or any specified part of the territories administered by such Government all or any of the following matters —

5* * * *

(a) the possession of opium

(b) the transport of opium

(c) the importation or exportation of opium and

⁸(d) the sale of opium and the farm of duties payable on the sale of opium by retail

¹ Subs by the Dangerous Drugs Act 1930 (2 of 1930) s 40 and Sch II for original definition

² Subs by the A O for I G

³ Ins by the A O

⁴ For definition of the customs frontiers of British India see Gazette of India Extraordinary dated 1st April 1937 p 433

⁵ Sub clauses (a) and (f) relating to the cultivation of the poppy and the manufacture of opium were repealed subsequent sub clauses re-enacted by Act 2 of 1930 s 40 and Sch II

⁶ The words subject to the control of the C C n C refer to the A O

⁷ Subs by the A O for local Gazette

⁸ This clause has been amended in Bengal by the Opium (Ben Amendment) Act 1933 (Ben 5 of 1933)

Prohibition
of poppy
cultivation
and possession
etc
of opium

Power to
make rules
to permit
such
matters

Provided that no duty shall be levied under any such rule on any opium imported and on which a duty is imposed by or under the law relating to sea customs¹ for the time being in force or under ²[the Dangerous Drugs Act, 1930]

' 6 [Duty on opium imported by land] Rep by the Dangerous Drugs Act, 1930 (II of 1930), s 40 and Sch II

3[7 The Provincial Government may, by notification published in the Official Gazette declare any place to be a warehouse for all or any opium legally imported whether before or after the payment of any duty leviable thereon into the territories administered by that Government, or into any specified part thereof and intended to be exported thence

Warehouse
ing opium

So long as the declaration remains in force, the owner of all such opium shall be bound to deposit it in that warehouse]

8 The 4[Provincial Government] 5* * * * may, from time to time, by notification in the 6[Official Gazette] make rules⁷ consistent with this Act to regulate the safe custody of opium warehoused under section 7 the levy of fees for such warehousing the removal of such opium for sale or exportation and the manner in which it shall be disposed of if any duty or fees leviable on it be not paid within twelve months from the date of warehousing the same

Power to
make rules
relating to
warehouses

89 Any person who in contravention of this Act or of rules made and notified under section 5 or section 8 —

Penalty for
illegal culti-
vation of
poppy, etc

9* * * *

(a) possesses opium or

(b) transports opium, or

(c) imports or exports opium or

(d) sells opium or

(e) omits to warehouse opium or removes or does any act in respect of warehoused opium

¹ See the Sea Customs Act 1878 (8 of 1878) Ch VIII

² Subs by the Dangerous Drugs Act 1930 (2 of 1930) s 40 and Sch II for section 6

³ Subs by the A O for the original section

⁴ Subs by the A O for I G

⁵ The words subject to the control of the G G in C rep by the A O

⁶ Subs by the A O for local Gazette

⁷ For rules made under this section see the Bombay Opium Manual and the Punjab Gazette 1911 Pt I p 496

⁸ This section has been amended in the Punjab Bengal and Assam by Punjab Act 3 of 1925 Ben Act 5 of 1933 and Assam Act 1 of 1933 respectively. In Bengal and Assam certain new sections have been inserted after this section by those amending Acts

⁹ Sub clauses (a) and (b) relating to the cultivation of poppy and the manufacture of opium were rep and subsequent sub clauses relettered by the Dangerous Drugs Act 1930 (2 of 1930) s 40 and Sch II

and any person who otherwise contravenes any such rule,

shall on conviction before a Magistrate, be punished for each such offence with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both

and where a fine is imposed, the convicting Magistrate shall direct the offender to be imprisoned in default of payment of the fine for a term which may extend to six months and such imprisonment shall be in excess of any other imprisonment to which he may have been sentenced

Presumption
in prosecutions under
section 9

10 In prosecutions under section 9 it shall be presumed until the contrary is proved that all opium for which the accused person is unable to account satisfactorily is opium in respect of which he has committed an offence under this Act

Confiscation
of opium

111 In any case in which an offence under section 9 has been committed —

2* * * * *

(a) the opium in respect of which any offence under the same section has been committed

(b) where in the case of an offence under clause 3[(b) or (c)] of the same section the offender is transporting importing or exporting any opium exceeding the quantity (if any) which he is permitted to transport import or export as the case may be the whole of the opium which he is transporting importing or exporting

(c) where in the case of an offence under clause 4[(d)] of the same section the offender has in his possession any opium other than the opium in respect of which the offence has been committed, the whole of such other opium

shall be liable to confiscation

The vessels packages and coverings in which any opium liable to confiscation under this section is found and the other contents (if any) of the vessel or package in which such opium may be concealed and the animals and conveyances used in carrying it shall likewise be liable to confiscation

Order of
confiscation
by whom to
be made

112 When the offender is convicted or when the person charged with an offence in respect of any opium is acquitted but the Magistrate

1 This section has been amended in Bengal by Ben Act 5 of 1933

2 Sub clause (a) which read (a) the poppy so cultivated was rep and subsequent sub-clauses were relettered by the Dangerous Drugs Act 1930 (2 of 1930) s 40 and Sch II

3 Subs for (d) or (e) *ibid*

4 Subs for (f) *ibid*

decides that the opium is liable to confiscation, such confiscation may be ordered by the Magistrate

Whenever confiscation is authorized by this Act, the officer ordering it may give the owner of the thing liable to be confiscated an option to pay, in lieu of confiscation, such fine as the officer thinks fit

When an offence against this Act has been committed, but the offender is not known or cannot be found, or when opium not in the possession of any person cannot be satisfactorily accounted for the case shall be inquired into and determined by the Collector of the district or Deputy Commissioner or by any other officer authorized by the ¹[Provincial Government] in this behalf either personally or in right of his office, who may order such confiscation. Provided that no such order shall be made until the expiration of one month from the date of seizing the things intended to be confiscated or without hearing the persons (if any) claiming any right thereto and the evidence (if any) which they produce in support of their claims

13 The ¹[Provincial Government] may ²* * * * * from time to time, by notification in the ³[Official Gazette] make rules consistent with this Act to regulate—

- (a) the disposal of all things confiscated under this Act and
(b) the rewards to be paid to officers and informers⁴* * *

514 Any officer of any of the departments of Excise Police Customs Salt Opium or Revenue superior in rank to a peon or constable, who may in right of his office be authorized by the ¹[Provincial Government] in this behalf and who has reason to believe from personal knowledge or from information given by any person and taken down in writing that opium liable to confiscation under this Act is ⁶* * * kept or concealed in any building vessel or enclosed place may be

- (a) enter into any such building vessel or place
(b) in case of resistance break open any door and remove any other obstacle to such entry
(c) seize such opium ⁷* * * and any other thing which he has reason to believe to be liable to confiscation

¹ Subs by the A O for L G

² The words with the previous sanction of the G G in C rep by s 2 and Sch I of the Devolution Act 1920 (38 of 1920)

³ Subs by the A O for local Gazette

⁴ The words out of the proceeds of fines and confiscation under this Act rep by the A O

⁵ This section has been amended in Assam by Assam Act 1 of 1933

⁶ The word manufactured rep by the Dangerous Drugs Act 1930 (2 of 1930)

⁷ 40 and Sch II

⁷ The words and all materials used in the manufacture thereof rep ibid

under section 11 or any other law for the time being in force relating to opium and

(d) detain and search, and if he think proper, arrest any person whom he has reason to believe to be guilty of any offence relating to such opium under this or any other law for the time being in force

Power to
seize opium
in open
places

115 Any officer of any of the said departments may—

(a) seize in any open place or in transit any opium or other thing which he has reason to believe to be liable to confiscation under section 11 or any other law for the time being in force relating to opium

Power to
detain
search and
arrest

(b) detain and search any person whom he has reason to believe to be guilty of any offence against this or any other such law and if such person has opium in his possession arrest him and any other persons in his company

Searches
how made

116 All searches under section 14 or section 15 shall be made in accordance with the provisions of the Code of Criminal Procedure ²

Officers to
assist each
other

117 The officers of the several departments mentioned in section 14 shall, upon notice given or request made be legally bound to assist each other in carrying out the provisions of this Act

Vexatious
entries
searches
seizures and
arrests

118 Any officer of any of the said departments who, without reasonable ground of suspicion enters or searches or causes to be entered or searched any building vessel or place,

or vexatiously and unnecessarily seizes the property of any person on the pretence of seizing or searching for any opium or other thing liable to confiscation under this Act

or vexatiously and unnecessarily detains searches or arrests any person,

shall for every such offence, be punished with fine not exceeding five hundred rupees

Issue of
warrants

119 The Collector of the district, Deputy Commissioner or other officer authorized by the ⁴[Provincial Government] in this behalf, either personally or in right of his office or a Magistrate may issue his warrant for the arrest of any person whom he has reason to believe to have committed an offence relating to opium or for the search whether by day or night of any building or vessel or place in which he has reason to believe opium liable to confiscation to be kept or concealed

¹ This section has been amended in Assam by Assam Act 1 of 1933

² See now the Code of Criminal Procedure 1898 (Act 5 of 1898)

³ This section has been amended in Bengal by Ben Act 5 of 1933

⁴ Substituted by the A.O. for I.C.

All warrants issued under this section shall be executed in accordance with the provisions of the Code of Criminal Procedure ¹

220 Every person arrested, and thing seized, under section 14 or section 15, shall be forwarded without delay to the officer in charge of the nearest police station, and every person arrested and thing seized under section 19 shall be forwarded without delay to the officer by whom the warrant was issued

Disposal of person arrested or thing seized

Every officer to whom any person or thing is forwarded under this section shall, with all convenient despatch, take such measures as may be necessary for the disposal according to law of such person or thing

321 Whenever any officer makes any arrest or seizure under this Act, he shall, within forty-eight hours next after such arrest or seizure, make a full report of all the particulars of such arrest or seizure to his immediate official superior

Report of arrests and seizures

22 [Procedure in case of illegal poppy cultivation] Rep by the Dangerous Drugs Act, 1930 (II of 1930) s 40 and Sch II

323 Any arrears of any fee or duty imposed under this Act or any rule made hereunder

Recovery of arrears of fees duties, etc

and any arrear due from any farmer of opium revenue,

may be recovered from the person primarily liable to pay the same to the ⁴[Provincial Government] or from his surety (if any) as if it were an arrear of land revenue

24 When any amount is due to a farmer of opium-revenue from his licensee, in respect of a license, such farmer may make an application to the Collector of the district Deputy Commissioner or other officer authorized by the ⁵[Provincial Government] in this behalf praying such officer to recover such amount on behalf of the applicant and on receiving such application such Collector Deputy Commissioner or other officer may in his discretion recover such amount as if it were an

Farmer may apply to Collector or other officer to recover amount due to him by licensee

¹ See now the Code of Criminal Procedure 1898 (5 of 1898)

² This section has been replaced by other sections in the Bombay Presidency by Bom. Act 2 of 1923 in the C. P. by C. P. Act 1 of 1929 and in Bengal by Ben. Act 5 of 1933. In the Bombay Presidency the substituted sections have been amended by Ben. Acts 14 of 1930 and 11 of 1931. In Assam a new section has been inserted after this section by Assam Act 1 of 1933.

³ This section has been amended in Bengal by Ben. Act 5 of 1933.

⁴ Subs. by the A. O. for Govt.

⁵ Subs. by the A. O. for I. G.

Treasure trove.

[1878 Act VI]

in arrear of land revenue and shall pay any amount so recovered to the applicant

Provided that the execution of any process issued by such Collector² [Deputy Commissioner] or other officer for the recovery of such amount shall be stayed if the licensee institutes a suit in the Civil Court to try the demand of the farmer and furnishes security to the satisfaction of such officer for the payment of the amount which such Court may adjudge to be due from him to such farmer

Recovery of
penalties due
under bond

Provided also that nothing contained in this section or done thereunder shall affect the right of any farmer of opium revenue to recover by suit in the Civil Court or otherwise any amount due to him from such licensee

25 When any person in compliance with any rule made hereunder gives a bond for the performance of any duty or act such duty or act shall be deemed to be a public duty or an act in which the public are interested as the case may be within the meaning of the Indian Contract Act 1872 section 74 and upon breach of the condition of such bond by him the whole sum named therein as the amount to be paid in case of such breach may be recovered from him as if it were an arrear of land revenue

³SCHEDULE —[*Enactments Repealed*] Rep by the Amending Act, 1891 (XII of 1891)

THE INDIAN TREASURE TROVE ACT 1878

CONTENTS

PREAMBLE

SECTIONS

1 Short title

Taxent

2 [*Repealed*]

¹ See the Revenue Recovery Act 1890 (1 of 1890)

² Subs by the Amending Act 1891 (12 of 1891) Sch II for Deputy Collector

³ A new Schedule has been subs in Assam by Assam Act 1 of 1933 for the original Schedule

SECTIONS

- 3 Interpretation clause
 - Treasure
 - Collector
 - Owner
- 4 Notice by finder of treasure
- 5 Notification requiring claimants to appear
- 6 Forfeiture of right on failure to appear
- 7 Matters to be enquired into and determined by the Collector
- 8 Time to be allowed for suit by person claiming the treasure
- 9 When treasure may be declared ownerless
 - Appeal against such declaration
- 10 Proceedings subsequent to declaration
- 11 When no other person claims as owner of place treasure to be given to finder
- 12 When only one such person claims and his claim is not disputed, treasure to be divided and shares to be delivered to parties
- 13 In case of dispute as to ownership of place proceedings to be stayed
- 14 Settlement of such dispute
- 15 and division thereupon
- 16 Power to acquire the treasure on behalf of Government
- 17 Decision of Collector final and no suit to lie against him for acts done *bona fide*
- 18 Collector to exercise powers of Civil Court
- 19 Power to make rules
- 20 Penalty on finder failing to give notice etc
- 21 Penalty on owner abetting offence under section 20

(Preliminary)

ACT No VI OF 1878¹

[13th February 1878.]

An Act to amend the law relating to Treasure-trove

Preamble

WHEREAS it is expedient to amend the law relating to treasure-trove; It is hereby enacted as follows —

Preliminary.

Short title

1 This Act may be called the Indian Treasure-trove Act, 1878

Extent

It extends to the whole of British India

2* * * *

2 [Repeal of enactments] Rep by the Amending Act, 1891 (XII of 1891)

Interpreta

tion clause
'Treasure'

3 In this Act—

'treasure' means anything of any value hidden in the soil, or in anything affixed thereto

"Collector"

"Collector" means (1) any Revenue officer in independent charge of a district, and (2) any officer appointed by the 3[Provincial Government] to perform the functions of a Collector under this Act⁴

"Owner"

When any person is entitled, under any reservation in an instrument of transfer of any land or thing affixed thereto, to treasure in such land or thing he shall for the purposes of this Act, be deemed to be the owner of such land or thing

¹ For the Statement of Objects and Reasons see Gazette of India, 1876 Pt V, p 1463, for discussions in Council, see *ibid*, Supplement, pp 1288 and 1326, *ibid*, 1878, pp 207 and 287

This Act has been declared to be in force in—

Sonthal Parganas by the Sonthal Parganas Settlement Regulation (3 of 1872), s 3,

British Baluchistan by the British Baluchistan Laws Regulation, 1913 (2 of 1913), s 3,

Khondmals District by the Khondmals Laws Regulation 1936 (4 of 1936), s 3 and Sch., and

Angul District by the Angul Laws Regulation, 1936 (5 of 1936) s 3 and Sch

It has also been declared, by notification under s 3 (a) of the Scheduled Districts Act 1874 (14 of 1874) to be in force in the Scheduled Districts of Hazaribagh, Lohardaga and Manbhum, and Pargana Dhalbhum and the Kolhan in the District of Sushilum—see Gazette of India, 1881 Pt I, p 504 (The District of Lohardaga included at that time the present District of Palamau which was separated in 1894, Lohardaga is now called the Ranchi District, see Calcutta Gazette, 1899, Pt I, p 44)

² The words "And it shall come into force at once" rep by the Repealing and Amending Act 1914 (10 of 1914)

³ Subs by the A O for 'L. G.'

⁴ In Bombay, Mamlatdars have been appointed to perform the functions of Collectors under this Act, see Bom R and O

(Procedure on finding Treasure)

Procedure on finding Treasure

4 Whenever any treasure exceeding in amount or value ten rupees is found, the finder shall, as soon as practicable, give to the Collector notice in writing—

Notice by
finder of
treasure

(a) of the nature and amount or approximate value of such treasure,

(b) of the place in which it was found

(c) of the date of the finding,

and either deposit the treasure in the nearest Government treasury, or give the Collector such security as the Collector thinks fit to produce the treasure at such time and place as he may from time to time require

5 On receiving a notice under section 4 the Collector shall after making such enquiry (if any) as he thinks fit take the following steps (namely) —

Notification
requiring
claimants
to appear

(a) he shall publish a notification in such manner as the [Provincial Government] from time to time prescribes in this behalf to the effect that on a certain date (*mentioning it*) certain treasure (*mentioning its nature amount and approximate value*) was found in a certain place (*mentioning it*), and requiring all persons claiming the treasure or any part thereof to appear personally or by agent before the Collector on a day and at a place therein mentioned such day not being earlier than four months or later than six months after the date of the publication of such notification

(b) when the place in which the treasure appears to the Collector to have been found was at the date of the finding in the possession of some person other than the finder the Collector shall also serve on such person a special notice in writing to the same effect

6 Any person having any right to such treasure or any part thereof as owner of the place in which it was found or otherwise and not appearing as required by the notification issued under section 5 shall forfeit such right

Forfeiture
of right
on failure
to appear

(Procedure on finding Treasure)

Matters to be enquired into and determined by the Collector

7 On the day notified under section 5, the Collector shall cause the treasure to be produced before him, and shall enquire as to and determine—

(a) the person by whom, the place in which, and the circumstances under which, such treasure was found, and

(b) as far as is possible, the person by whom, and the circumstances under which such treasure was hidden

Time to be allowed for suit by person claiming the treasure

8 If, upon an enquiry made under section 7, the Collector sees reason to believe that the treasure was hidden within one hundred years before the date of the finding, by a person appearing as required by the said notification and claiming such treasure, or by some other person under whom such person claims, the Collector shall make an order adjourning the hearing of the case for such period as he deems sufficient, to allow of a suit being instituted in the Civil Court by the claimant, to establish his right

When treasure may be declared ownerless

9 If upon such enquiry the Collector sees no reason to believe that the treasure was so hidden, or

if, where a period is fixed under section 8, no suit is instituted as aforesaid within such period to the knowledge of the Collector, or

if such suit is instituted within such period and the plaintiff's claim is finally rejected,

the Collector may declare the treasure to be ownerless

Appeal against such declaration

Any person aggrieved by a declaration made under this section may appeal against the same within two months from the date thereof to the Chief Controlling Revenue authority¹

Subject to such appeal, every such declaration shall be final and conclusive

Proceedings subsequent to declaration

10 When a declaration has been made in respect of any treasure under section 9, such treasure shall, in accordance with the provisions hereinafter contained either be delivered to the finder thereof, or be divided between him and the owner of the place in which it has been found in manner hereinafter provided

When no other person claims as owner of place treasure to be given to finder

11 When a declaration has been made in respect of any treasure as aforesaid, and no person other than the finder of such treasure has appeared as required by the notification published under section 5 and claimed a share of the treasure as owner of the place in which it has been found, the Collector shall deliver such treasure to the finder thereof

¹ For definition of Chief Controlling Revenue-authority, see the General Clauses Act 1897 (10 of 1897) s. 3 (9a)

(Procedure on finding Treasure)

12 When a declaration has been made as aforesaid in respect of any treasure, and only one person other than the finder of such treasure has so appeared and claimed, and the claim of such person is not disputed by the finder, the Collector shall proceed to divide the treasure between the finder and the person so claiming according to the following rule (namely) —

When only one such person claims and his claim is not disputed treasure to be divided

If the finder and the person so claiming have not entered into any agreement then in force as to the disposal of the treasure three fourths of the treasure shall be allotted to such finder and the residue to such person. If such finder and such person have entered into any such agreement the treasure shall be disposed of in accordance therewith.

Provided that the Collector may in any case, if he thinks fit, instead of dividing any treasure as directed by this section —

(a) allot to either party the whole or more than his share of such treasure, on such party paying to the Collector for the other party such sum of money as the Collector may fix as the equivalent of the share of such other party or of the excess so allotted as the case may be or

(b) sell such treasure or any portion thereof by public auction and divide the sale proceeds between the parties according to the rule hereinbefore prescribed

Provided also that, when the Collector has by his declaration under section 9 rejected any claim made under this Act by any person other than the said finder or person claiming as owner of the place in which the treasure was found, such division shall not be made until after the expiration of two months without an appeal having been presented under section 9 by the person whose claim has been so rejected or when an appeal has been so presented after such appeal has been dismissed.

When the Collector has made a division under this section he shall deliver to the parties the portions of such treasure or the money in lieu thereof, to which they are respectively entitled under such division

and shares to be delivered to parties

13 When a declaration has been made as aforesaid in respect of any treasure, and two or more persons have appeared as aforesaid and each of them claimed as owner of the place where such treasure was found, or the right of any person who has so appeared and claimed is disputed by the finder of such treasure the Collector shall retain such treasure and shall make an order staying his proceedings with a view to the matter being enquired into and determined by a Civil Court

In case of dispute as to ownership of place proceedings to be stayed

14 Any person who has so appeared and claimed may within one month from the date of such order institute a suit in the Civil Court to

Settlement of such dispute,

(Procedure on finding Treasure Penalties)

obtain a decree declaring his right, and in every such suit the finder of the treasure and all persons disputing such claim before the Collector shall be made defendants

and division thereupon

15 If any such suit is instituted and the plaintiff's claim is finally established therein, the Collector shall, subject to the provisions of section 12, divide the treasure between him and the finder

If no such suit is instituted as aforesaid, or if the claims of the plaintiffs in all such suits are finally rejected, the Collector shall deliver the treasure to the finder

Power to acquire the treasure on behalf of Government

16 The Collector may, at any time after making a declaration under section 9 and before delivering or dividing the treasure as hereinbefore provided, declare by writing under his hand his intention to acquire on behalf of the Government the treasure, or any specified portion thereof, by payment to the persons entitled thereto of a sum equal to the value of the materials of such treasure or portion, together with one fifth of such value, and may place such sum in deposit in his treasury to the credit of such persons and thereupon such treasure or portion shall be deemed to be the property of Government, and the money so deposited shall be dealt with as for as may be, as if it were such treasure or portion

Decision of Collector final and no suit to lie against him for acts done *in a fide*

17. No decision passed or act done by the Collector under this Act shall be called in question by any Civil Court, and no suit or other proceeding shall lie against him for anything done in good faith in exercise of the powers hereby conferred

Collector to exercise powers of Civil Court

18 A Collector making any enquiry under this Act may exercise any power conferred by the Code of Civil Procedure¹ on a Civil Court for the trial of suits

Power to make rules

19 The 2[Provincial Government] may, from time to time, make rules³ consistent with this Act to regulate proceedings hereunder

Such rules shall, on being published in the 4[Official Gazette], have the force of law

Penalties

Penalty on finder failing to give notice etc

20 If the finder of any treasure fails to give the notice, or does not either make the deposit or give the security required by section 1 or alters or attempts to alter such treasure so as to conceal its identity the

¹ See now the Code of Civil Procedure 1908 (Act 5 of 1908)

² Subs. by the A. O. for 'L. G.'

³ For rules made under this section see different local Rules and Orders

⁴ Subs. by the A. O. for local Gazette

share of such treasure or the money in lieu thereof to which he would otherwise be entitled, shall vest in Her Majesty

and he shall on conviction before a Magistrate be punished with imprisonment for a term which may extend to one year or with fine or with both

21 If the owner of the place in which any treasure is found abets within the meaning of the Indian Penal Code any offence under section 20 the share of such treasure or the money in lieu thereof to which he would otherwise be entitled shall vest in Her Majesty

Penalty on owner abetting offence under section 20

and he shall on conviction before a Magistrate be punished with imprisonment which may extend to six months or with fine or with both

SCHEDULE —[Repealed by the Amending Act 1891 (VII of 1891)]

THE SEA CUSTOMS ACT 1878

CONTENTS

PREAMBLE

CHAPTER I

SECTIONS

PRELIMINARY

- 1 Short title
- Local extent
- Commencement
- 2 [Repealed]
- 3 Interpretation
- 4 Agent of owner of goods to be deemed owner for certain purposes
- 5 When ship's agent may act for master

CHAPTER II

APPOINTMENT AND POWERS OF OFFICERS, &c.

- 6 Appointment of Customs officers
- 7 [Repealed]

SECTIONS

- 8 *Performance of duties of Customs collector, where no custom-house*
 - 9 *Power to make rules*
 - 10 *Customs officers exempted from service on jury or inquest or as assessors*
-

CHAPTER III

APPOINTMENT OF PORTS WHARVES, CUSTOM HOUSES, WAREHOUSES AND
BOARDING AND LANDING STATIONS

- 11 *Power to appoint ports wharves and custom houses*
 - 12 *Power to declare places to be ports for coasting trade*
 - 13 *Power to declare that foreign ports shall be regarded as customs ports for certain purposes*
 - 14 *Power to declare warehousing ports*
 - 15 *Power to appoint public warehouses*
 - 16 *Power to license private warehouses*
Form of application for license
Revocation of license
 - 17 *Stations for Customs officers to board and land*
-

CHAPTER IV

PROHIBITIONS AND RESTRICTIONS OF IMPORTATION AND EXPORTATION

- 18 *Prohibitions*
 - 19 *Power to prohibit or restrict importation or exportation of goods*
 - 19 A *Detention and confiscation of goods whose importation is prohibited*
-

CHAPTER V

LEVY OF, AND EXEMPTION FROM, CUSTOMS DUTIES

- 20 *Goods dutiable*
- 21 *Goods partially composed of dutiable articles*
- 22 *Power to fix tariff values*
- 23 *General power to exempt from customs duties*
Power to authorize, in special cases, exemption from duty
- 24 *Baggage in actual use*

SECTIONS

- 25 Re imported articles of country produce
Proviso
- 26 Excise duty on importation of certain country goods
- 27 Goods derelict and wreck
- 28 Country provisions and stores may be shipped free of duty
- 29 Owner to declare real value etc of goods in bill of entry or
shipping bill
Power to require production of invoice etc
- 30 'Real value' defined
- 31 Examination of *ad valorem* good
- 32 Procedure where such goods are undervalued by owner
- 33 Abatement allowed on damaged goods
Reduced duty how determined
- 34 Deterioration of tariff value goods
- 34 A Abatement of duty on goods on which duty is levied on
quantity
- 35 No abatement when duty is levied on quantity
- 36 Restriction on amendment of bill of entry or shipping bill
- 37 Alteration of import duty or tariff valuation
- 38 Alteration of export duty or tariff valuation
- 39 Payment of duties short levied or erroneously refunded
- 40 No refund of charges erroneously levied or paid unless claimed
within three months
- 41 Power to give credit for and keep account current of duties and
charges

CHAPTER VI

DRAWBACK

- 42 Drawback allowable on re export
Conditions for grant of drawback
- 43 Drawback on goods exported to customs port and thence to
foreign port
Proviso
- 43 A Drawback on goods taken into use between importation and
re exportation
- 44 Drawback of duties on wine and spirit allowed for officers of
NAVY
- 45 Persons entering such wine or spirit for drawback to declare name
and rank of officer claiming same

SECTIONS

- 46 Transfer of wine or spirit from one Naval officer to another
- 47 Provisions and stores for Her Majesty's Navy
- 48 Indian Navy
- 49 Power to declare what goods are identifiable
and to prohibit drawback in case of specified foreign port
- 50 When no drawback allowed
- 51 Time to claim drawback
When payment made
- 52 Declaration by parties claiming drawback

CHAPTER VII

ARRIVAL AND DEPARTURE OF VESSELS

Arrival and Entry of Vessels inwards

- 53 Power to fix places beyond which inward bound vessels are not
to proceed until manifest delivered
Delivery of manifest when vessel anchors below place so fixed.
- 54 Delivery of manifest where no place has been so fixed
- 55 Signature and contents of manifest
Amendment of errors in manifest
- 56 Duty of person receiving manifest
- 57 Bulk not to be broken until manifest etc delivered and vessel
entered inwards
- 58 Master, if required to deliver bill of lading etc, to Customs
collector and answer questions
- 59 Special pass for breaking bulk
- 60 Manifest etc may be delivered by ship's agent

Entry outwards, Port clearance and Departure of Vessels

- 61 Order for entry outwards to be obtained before export cargo is
shipped
- 62 No vessel to depart without port clearance
No pilot to take charge of vessel proceeding to sea without
production of port clearance
- 63 Application for port clearance
Master on applying for port clearance to deliver documents and
answer questions

SECTIONS

- 64 Power to refuse port clearance
- 65 Grant of port clearance
- 66 Grant of port clearance on security of ship's agent

CHAPTER VIII

GENERAL PROVISIONS AFFECTING VESSELS IN PORT

- 67 Power to depute Customs officer to board ships
Duty of such officer
- 68 Officer and servant to be received
Accommodation of officer and servant
- 69 Officers of Customs to have free access to every part of ship, and
may seal and secure goods
Power to authorize search and opening of locks
- 70 Goods not to be shipped or discharged or water borne except in
presence of officer
- 71 Period allowed for discharge and shipment of cargo
Consequence of exceeding same
Allowance for period during which vessel is laid up
- 72 Goods not to be landed etc. on Sundays or holidays without
permission nor except within fixed hours
- 73 Goods not to be shipped etc. except at wharves
- 74 Power to exempt from sections 70 and 73
- 75 Power to make rules regarding baggage and mails
Landing fees
- 76 Boat note
- 77 Goods water borne to be forthwith landed or shipped
- 78 Such goods not to be transhipped without permission
- 79 Power to prohibit plying of unlicensed cargo boats
Issue of licenses and registration of cargo boats
- 80 Power to require goods to be weighed or measured on board
before landing or after shipment

CHAPTER IX

OF DISCHARGE OF CARGO AND ENTRY INWARDS OF GOODS

- 81 Discharge of cargo may commence on receipt of due bill of lading
- 82 Goods not to leave ship unless entered in manifest

SECTIONS

- 83 Procedure in respect of goods not landed within time allowed
- 84 Power to land small parcels
Notice regarding unclaimed packages
- 85 Power to permit immediate discharge
- 86 Entry for home consumption or warehousing
- 87 Assessment of dutiable goods
- 88 Procedure in case of goods not cleared or warehoused within four months after entry of vessel
Power to direct sale of perishable goods
Proviso

CHAPTER X

OF CLEARANCE OF GOODS FOR HOME CONSUMPTION

- 89 Clearance for home consumption

CHAPTER XI

WAREHOUSING

Of the Admission of Goods into a Warehouse

- 90 Application to warehouse
- 91 Form of application
- 92 Warehousing bond
Form of bond
- 93 Forwarding of goods to warehouse
- 94 Receipt of goods at warehouse
- 95 Goods how warehoused
- 96 Warrant to be given when goods are warehoused
Form of warrant

Rules relating to Goods in a Warehouse

- 97 Access of Customs officer to private warehouse
- 98 Power to cause packages lodged in warehouse to be opened and examined
- 99 Access of owners to warehoused goods
- 100 Owner's power to deal with warehoused goods
- 101 Payment of rent and warehouse dues
- 102 Goods not to be taken out of warehouse, except as provided by this Act

SECTIONS

- 103 Period for which goods may remain warehoused under bond
 Goods in private warehouse on cancellation of license
Of the Removal of Goods from one Warehouse to another
- 104 Power to remove goods from one warehouse to another in same port
- 105 Power to remove goods from one port to another
 Procedure
- 106 Transmission of account of goods to officers at port of destination
 Bond for due arrival and re warehousing
- 107 Remover may enter into a general bond
- 108 Goods on arrival at port of destination to be subject to same laws as goods on first importation
- 109 Bond under section 92 to continue in force notwithstanding removal
Clearance for Home Consumption or Shipment
- 110 Clearance of bonded goods for home consumption
- 111 Clearance of same for shipment to foreign port
- 112 Clearance of same for shipment as provisions etc, on vessel proceeding to foreign ports
- 113 Form of application for clearance of goods
 Application when to be made
- 114 Re assessment of warehoused goods when damaged
- 115 Re assessment on alteration of duty or tariff valuation
- 116 Allowance in case of wine spirit beet or salt
- 117 Further special allowance
Of the Forfeiture and Discharge of the Bond
- 118 If goods are improperly removed from warehouses or allowed to remain beyond time fixed
 or lost or destroyed
 or taken as samples
 Collector may demand duty etc
- 119 Procedure on failure to pay duty etc
- 120 Noting removal of goods
- 121 Register of bonds
 Cancellation and return of bonds

SECTIONS

Miscellaneous

- 122 Power to remit duties on warehoused goods lost or destroyed
- 123 Responsibility of warehouse keeper
Compensation for loss or injury
- 124 Public warehouse to be locked
- 125 Power to decide where goods may be deposited in public warehouse and on what terms
- 126 Expenses of carriage packing, etc. to be borne by owners
- 127 Bengal Bonded Warehouse Association

CHAPTER VII

TRANSHIPMENT

- 128 Power to permit transhipment without payment of duty
- 129 Superintendence of transhipment
- 130 Subsidiary rules as to transhipment
- 131 Entry and warehousing on arrival of goods transhipped under section 128, clause 2
- 132 Transhipment of provisions and stores from one vessel to another of same owner without payment of duty
- 133 Levy of transhipment fee
- 134 Power to prohibit transhipment
- 135 No goods to be transhipped except as provided

CHAPTER VIII

EXPORTATION OR SHIPMENT AND RELOADING

- 136 No goods to be shipped, etc., till entry outwards of vessel
- 137 Clearance for shipment
- 138 Bond required in certain cases before exportation
- 139 Additional charge on goods cleared for shipment after port clearance granted
- 140 Notice of non-shipment or reloading, and return of duty thereon
- 141 Goods reloaded or transhipped from a vessel returning to port, or putting into another port
- 142 Vessel returning to port may enter and land goods under import-rules
- 143 Landing of cargo during repairs

CHAPTER XIV

SPIRIT

Exportation of Spirit under Bond for Excise duty

SECTIONS

- 144 Rules for removal of spirit from distillery without payment of duty for exportation
- 145 Spirit for export to be taken direct from distillery to Custom house under pass
- 146 Gauging and proving of spirit
- 147 Duty to be recovered on any deficiency in spirit under bond
- 148 Duty on spirit exported under bond from one Indian port to another
- 149 Removal for local consumption of spirit intended for exportation

Drawback of Excise-duty on Export of Spirit

- 150 Drawback of excise duty on spirit exported

Miscellaneous

- 151 Differential duty to be levied in certain cases
- 152 Rum shrub etc. how charged with duty
Provisions respecting spirit applied to such liquors
- 153 Conditions of drawback and remission of duty on spirit
- 154 Re-land of spirit shipped
- 155 Power to make rules for ascertaining that imported spirit has been rendered unfit for human consumption
Decision where no rules or then applicability disputed

CHAPTER XV

COASTING TRADE

- 156 Chapters VII, IX, X and part of XIII inapplicable to coasting trade
- 157 Power to regulate coasting trade
- 158 Coasting vessels to deliver manifest and obtain port clearance before leaving port of lading
- 159 Delivery of manifest etc. on arrival
- 160 Departure from intermediate port
- 161 Power to require bond before port clearance is granted
- 162 Discharge of cargo
- 163 Goods on coasting vessel if excisable not to be unladen without permission

SECTIONS

- 164 Grant and revocation of general pass
- 165 Rules respecting cargo books to be kept by masters of coasting-vessels
- 166 Power to board and examine coasting vessels

 CHAPTER XVI

OFFENCES AND PENALTIES

167 Punishments for offences —

- 1 For infringing rules made under Act
- 2 For landing or shipping goods at unauthorized port, etc
- 3 For shipping, landing, concealing, etc, contrary to Act
For being on board vessel on which offence is committed under No 4
- 4 For vessel which has been in port with a cargo afterwards being found in ballast and cargo unaccounted for
- 5 For masters of tug steamers or pilot vessels receiving or discharging any goods without due authority from sea going vessel
- 6 For not bringing to at boarding station
- 7 For vessel removing from place of mooring or unloading, without due authority
For vessel not being moored in accordance with directions under section 17
- 8 For goods being imported or exported contrary to prohibition
- 9 For unauthorized declaration as to value of goods
- 10 For not exporting or re landing drawback goods
- 11 For unauthorized lading or unlading of wine, spirit, etc
- 12 For entering goods for drawback, which are less in value than the amount of drawback claimed
- 13 For proceeding inward beyond fixed place before delivery of manifest
- 14 For wilfully omitting to deliver manifest when vessel anchors below reporting station

SECTIONS

167 Punishments for offences—*continued*

- 15 For like omission when reporting station has not been fixed
- 16 For master delivering unsigned or untrue manifest
- 17 For not being able to account for missing goods or deficiency of goods
- 18 For refusing to receive or counter-sign manifest
- 19 For breaking bulk without permission
- 20 For false entry or fraudulent alteration in bill of lading
For not making bill before leaving place where goods shipped
For cargo being stored, destroyed or thrown overboard and not satisfactorily accounted for
- 21 For attempting to depart without port clearance
- 22 For departing without port clearance
- 23 For pilot taking charge of vessel without port clearance
- 24 For refusing to receive officer of Customs on board
- 25 For disobeying section 68
- 26 For masters resisting search, removing marks, etc., placed by Customs officer, secretly conveying away goods or opening hatchway after fastened by Customs officer
- 27 For lading in absence of Customs officer
- 28 For removing goods contrary to section 70 72 or 75
- 29 For sending goods without or in excess of boat note
- 30 For non receipt or non delivery or non signing of boat note
- 31 For not landing or shipping goods in accordance with section 73 77 or 78
- 32 For goods being found in unlicensed cargo boats
- 33 For discharging goods not duly entered in manifest
- 34 For goods being found concealed and unaccounted for
- 35 For goods found not agreeing in description and quantity with entry in manifest
- 36 For removing goods after landing and before due entry.

SECTIONS

167 Punishments for offences—*continued*

- 37 For goods being brought to be passed through Custom-house when packages differ from description given, contents are misdescribed or misstated or other goods are concealed amongst them
- 38 For misdescription of goods
- 39 For taking or passing goods without entry
- 40 Prohibited or dutiable goods concealed in baggage
- 41 For improper carrying into warehouse
- 42 For withholding or removing before examination, goods entered to be warehoused
- 43 For warehousing goods improperly
- 44 For refusing to open private warehouse when duly required
- 45 For neglecting to stow goods properly in warehouse
- 46 For importer or owner of warehoused goods clandestinely gaining access
- 47 For opening or altering warehoused goods
- 48 For deficiencies in contrivention of section 98 or 100 of goods in a private warehouse
- 49 For failing to produce goods when required
- 50 For concealing removing abstracting or transferring from one package to another goods duly warehoused
- 51 For excess in private warehouse, over registered quantity
- 52 For removing warehoused goods improperly
- 53 For taking goods out of warehouse without paying duty
- 54 For infringing rules or orders regarding transhipment
- 55 For shipping goods before entry outwards
- 56 For shipping goods not in shipping bill
- 57 For not giving notice of short shipping or re-landing as required by section 110
- 58 For landing at place other than that for which goods have been cleared
- 59 For deficiency in goods on which drawback has been paid on board vessel referred to in section 112

SECTIONS

157 Punishments for offences—*concluded*

- 60 For irregularly re lading spirituous liquors
- 61 For contravening rules relating to spirit
- 62 For contravention of rules made under section 157
- 63 For contrary to such rules touching, at foreign port or not declaring in writing that vessel touched at foreign port
- 64 For non compliance with section 158 159 or 160
- 65 For failure to produce certificate
- 66 For master of coasting vessel violating any conditions of general pass
- 67 For contravention of the provisions of section 165
- 68 For dutiable goods entered in cargo boat not being found or for not entering
- 69 For failure to keep cargo book correctly etc
- 70 For breach in respect of lading, carrying coastwise and unloading
- 71 For refusal to produce documents
- 72 For making false declaration destroying or refusing to produce document or refusing to answer questions
- 73 For possession of smuggled goods
- 74 For searching persons on insufficient grounds
- 75 For Customs officers guilty of breach of duty
- 76 For Customs officers committing or conniving at frauds against Customs revenue
- 77 For neglect of Police officer to give notice
- 78 For obstruction to Customs officers
- 79 For Customs officer disclosing particulars learnt officially concerning goods, or showing or parting with samples
- 80 For acting as agent without authority

169 Packages and contents included in confiscation of good

Also conveyances and animals used in removal

Tackle, etc , included in confiscation of vessels

CHAPTER XVII

PROCEDURE RELATING TO OFFENCES APPEALS, ETC

SECTIONS

- 169 Power to search on reasonable suspicion
- 170 Persons may, before search, require to be taken before Magistrate or Customs collector
- 171 Power to stop vessels, carts, etc and search for goods on reasonable suspicion
- 172 Power to issue search warrants
- 173 Persons reasonably suspected may be arrested
- 174 Persons arrested to be taken to nearest Magistrate or Customs collector
- 175 Persons taken before Magistrate may be detained or admitted to bail
- 176 Person escaping may be afterwards arrested
- 177 Persons in Her Majesty's Navy, or His Majesty's Indian Navy, when arrested, to be secured on board until warrant procured
- 178 Seizure of things liable to confiscation
- 179 Things seized how dealt with
- 180 Procedure in respect of things seized on suspicion
- 181 When seizure or arrest is made, reason in writing to be given
- 181A Power to detain packages containing certain publications imported into British India
- 181B Procedure for disposal by High Court of applications for release of packages so detained
- 181C Jurisdiction barred
- 182 Adjudication of confiscations and penalties
- 183 Option to pay fine in lieu of confiscation
- 184 On confiscation, property to vest in Her Majesty
- 185 Levy of penalty for failure to bring to
- 186 Penalty under Act not to interfere with punishment under other law
- 187 Offences not specially provided for how tried
- 188 Appeal from subordinate to Chief Customs authority
- 189 Deposit, pending appeal, of duty demanded
- 190 Power to remit penalty or confiscation

SECTIONS

- 191 Revision by the Central Government
- 192 Goods on which penalty incurred not to be removed till payment
Other goods of person liable to fine or penalty may be detained
- 193 Enforcement of payment of penalty

CHAPTER XVIII

MISCELLANEOUS

- 194 Power to open packages and examine goods
- 195 Power to take samples of goods
- 195A Power to make rules for determining whether mineral oil is
suitable for use as an illuminant
- 196 Owner to pay expense incidental to compliance with Customs
law
- 197 No compensation for loss or injury except on proof of neglect or
wilful act
- 198 Notice of proceedings
Limitation
- 199 Wharfage fees
- 200 Duplicates of documents may be granted on payment of fee
- 201 Amendment of documents
- 202 Custom house agents
- 203 Agent to produce authority if required
- 204 Rules to be notified
- 205 Publication of notifications in Official Gazettes
- 206 Remission of duty and compensation to owner in certain cases
- 207 Saving of Calcutta Port Commissioners and Bombay Port Trust
Acts

SCHEDULE

PART I —[*Repealed*]

PART II —Forms—

- A —Form of Bond for Import duty
- B —Form of Bonded Warehouse Warrant
- C —Form of Bond for the Removal of Spirit from a Licensed
Distillery

(Chapter I.—Preliminary)

ACT No. VIII OF 1878.¹

[8th March 1878]

An Act to consolidate and amend the law relating to the levy of Sea Customs-duties

Preamble

WHEREAS it is expedient to consolidate and amend the law relating to the levy of Sea Customs-duties, It is enacted as follows —

CHAPTER I.

PRELIMINARY.

Short title

1 This Act may be called the Sea Customs Act, 1878.

Local extent
Commence-
ment

It extends to the whole of British India, and shall come into force on the first day of April 1878

2 [Repeal of Enactments References to enactments repealed. Saving of appointments, etc.] Rep by the Repealing Act, 1938 (I of 1938), s 2 and Sch

Interpreta-
tion

3. In this Act, unless there be something repugnant in the subject or context,—

"Chief
Customs
authority"

2[(a) "Chief Customs-authority" means the Central Board of Revenue constituted under the Central Board of Revenue Act, 1924, and includes, in relation to any power or duty which the ³[Central Government] may, by notification in the ⁴[Official Gazette], transfer from the Central Board of Revenue ⁵[and entrust to a Provincial Government or to an officer of a Provincial Government under section 124(1) of the Government of India Act, 1935, such Gov-^{2c}ernment or officer, as the case may be]—]

¹ For Statement of Objects and Reasons, see Gazette of India, 1876, Pt V, p 1402, for the Report of the Select Committee, see *ibid*, 1877, Pt V, p 491; for discussions in Council, see *ibid*, 1876, Supplement, p 1289; *ibid*, 1877, Supplement, p 2770, *ibid*, 1878, Supplement, p 448

The Inland Bonded Warehouses Act, 1896 (8 of 1896), is to be read with and taken as part of this Act—see s 1 (2) of the former Act

Ss 144 to 154 have been declared to be in force in the Khondmals District by the Khondmals Laws Regulation, 1936 (4 of 1936) s 3 and Sch, and in the Angul District by the Angul Laws Regulation, 1936 (5 of 1936), s 3 and Sch

Clause (a) of s 3, as 6, 7, 8, 9, 19, 167 (in certain respects), 168, 170 176, 178 184, 186, 183 193, 197 193 have been extended to British Biluchistan by notification under s 5 of the Scheduled Districts Act, 1874 (14 of 1874), see Gazette of India, 1926, Part II A, p 343

² Subs by s 4 and Sch of the Central Board of Revenue Act, 1924 (4 of 1924), for the original definition

³ Subs by the A O for "G G in C"

⁴ Subs by the A O for "Gazette of India".

⁵ Subs by the A O for "to a L G, the L G or such officer as the L G may appoint in that behalf".

(Chapter I—Preliminary)

- (b) "Chief Customs officer" denotes the Chief Executive Officer of Sea customs for any port to which this Act applies Chief Customs officer
- (c) "Customs collector" includes every officer of Customs for the time being in separate charge of a custom house, or duly authorized to perform all, or any special, duties of an officer so in charge Customs collector
- (d) "customs port" means any place ¹ * * * declared under section 11 to be a port for the shipment and landing of goods Customs port
- (e) "foreign port" means ² * * * any place beyond the limits of British India ³ Foreign port
- (f) ⁴ "vessel" includes anything made for the conveyance by water of human beings or property "Vessel"
- (g) "coasting vessel" denotes any vessel proceeding from one customs port to another customs port, whether touching at any intermediate foreign port or not or proceeding from or to a customs port to or from a place declared to be a port under section 12 Coasting vessel
- (h) ⁵ "master," when used in relation to any vessel, means any person except a pilot or harbour master, having command or charge of such vessel "Master"
- (i) "warehousing port" means any customs port declared under section 14 to be a warehousing port "Warehousing port"
- (j) "warehouse" denotes any place appointed or licensed under section 15 or section 16 Warehouse

6* * * *

¹ The words except Aden rep by the A O

² The words Aden and rep by the A O

³ For order declaring ports in Cochin and Travancore to be British Indian ports for the purposes of the levy of customs duties and the payment of drawback, see Gazette of India 1865, p 780 and Gen R and O Vol II, p 68

For order declaring ports in the territories of His Highness the Gaekwar, the Thikur of Bhavnagar and the Nawab of Cambay to be British Indian ports for the purposes of this Act, see Gazette of India, 1866, p 908 and Gen R and O, Vol II, p 68

As to the ports of the Junjira State in Bombay see Gazette of India, 1834 and 1885, Pt I pp 282 and 142 respectively

⁴ Cf definition in s 3 (36) of the General Clauses Act, 1897 (10 of 1897)

⁵ Cf definition in s 3 (32) *ibid*

⁶ Cl (1) defining "official Gazette" was ins by s 4 and Sch of the Central Board of Revenue Act, 1924 (4 of 1924) but rep by the A O See now definition in s 3 (7-a) of the General Clauses Act, 1897 (10 of 1897)

(Chapter I—Preliminary. Chapter II—Appointment and Powers of officers, etc.)

Agent of owner of goods to be deemed owner for certain purposes

4 When any person is expressly or impliedly authorized by the owner of any goods to be his agent in respect of such goods for all or any of the purposes of this Act, and such authorization is approved by the Customs-collector, such person shall, for such purposes, be deemed to be the owner of such goods

When ship's agent may act for master

5 Anything which a master is required or empowered to do under this Act may, with the express or implied consent of such master and the approval of the Customs collector, be done by a ship's agent

CHAPTER II

APPOINTMENT AND POWERS OF OFFICERS, ETC

Appointment of Customs officers

1[6 The 2[Central Government] may appoint such persons as 3[it] thinks fit to be officers of Customs, and to exercise the powers conferred, and perform the duties imposed, by this Act on such officers]

47 [Delegation of powers under section 6] Rep. by the A. O

Performance of duties of Customs collector, where no custom house

8. At any place for which there is no custom-house, the Collector of the district and the officers subordinate to him shall, unless the 5[Central Government] otherwise directs⁶, perform all duties imposed by this Act on a Customs-collector and other officers of Customs.

Power to make rules

9. The Chief Customs authority may from time to time ⁷ * * * make rules consistent with this Act—

(a) prescribing and limiting the powers and duties of officers of Customs,

¹ Subs by the Central Board of Revenue Act, 1924 (4 of 1924), s 4 and Sch, for the original s 6

² Subs by the A O for "G G in C"

³ Subs by the A O for "he"

⁴ Section 7, as substituted by s 4 and Sch of the Central Board of Revenue Act, 1924 (4 of 1924), for the original section, read as follows —

"The G G in C may delegate to any L G or to the Chief Customs authority any power conferred upon him by s 6, and the L G or the Chief Customs authority may delegate to any officer of Customs any power so delegated to it" It was rep by the A O in view of ss 124 (1) and 241 (1) (a) of the G of I Act, 1935 (26 Geo 5, c 2), which provide for such delegation C/ also s 4A (2) of the General Clauses Act, 1897 (10 of 1897)

⁵ Subs by the A O for "L G"

⁶ In Madras, officers of the Salt, Abkari and Customs Departments have been directed to perform the duties imposed by ss 174 and 182 in regard to imported intoxicating drugs prepared from the hemp plant, see Fort St George Gazette, 1901, Pt I, p 85 As to other officers, see *ibid*, 1910, Pt I, p 83

⁷ The words "with the sanction of the L. G" rep by the Decentralization Act, 1914 (4 of 1914), s 2 and Sch, Pt I

(Chapter II—Appointment and Powers of officers, etc Chapter III—Appointment of Ports, Wharves, Custom houses, Warehouses, and Boarding and Landing Stations)

- (b) regulating the delegation of their duties by such officers, and
(c) generally to carry out the provisions of this Act

10 No Chief Customs authority or Chief Customs officer, and no other officer of Customs whom such Chief authority or Chief officer deems it necessary to exempt on grounds of public duty, shall be compelled to serve on any jury or inquest, or as an assessor

Customs officers exempted from service on jury or inquest or as assessors

CHAPTER III

APPOINTMENT OF PORTS, WHARVES, CUSTOM HOUSES, WAREHOUSES, AND BOARDING AND LANDING STATIONS

- 11 ¹[The Chief Customs authority] may from time to time by notification in the Official Gazette 2—
- (a) declare the places ³ * * * * * which alone shall be ports for the shipment and landing of goods, ⁴wharves and custom houses
- (b) declare the limits of such ports
- (c) ⁴appoint proper places therein to be wharves for the landing and shipping of goods or of particular classes of goods
- (d) ⁴declare the limits of any such wharf
- (e) alter the name of any such port or wharf and
- (f) declare what shall for the purposes of this Act be deemed to be a custom house and the limits thereof⁵

Power to appoint ports wharves and custom houses

12 ¹[The Chief Customs authority] may also from time to time in like manner declare places to be ⁶ports for the carrying on of coasting-trade with customs ports or with any specified customs port and for no other purpose

Power to declare places to be ports for coasting trade

¹ Subs. by s. 4 and Sch. of the Central Board of Revenue Act 1924 (4 of 1924) for "The I. G." or if so authorized by the L. G. the Chief Customs authority

² For notifications issued under this section see different local rules and orders

³ The words "within the territories administered by it" rep. by s. 4 and Sch. of Act 4 of 1924

⁴ For appointment of certain places to be wharves for the landing and shipping of goods see Gen. R. and O. Vol. II pp. 43-67

⁵ For notification by the Govt. of Madras declaring certain areas and buildings to be a custom house at the Port of Madras see Fort St. George Gazette 1904 Pt. I p. 477 For the appointment of His Majesty's Mint Bombay as a custom house for certain purposes see Gen. R. and O. Vol. II p. 67

⁶ For notifications issued under s. 12 see different local rules and orders

(Chapter III — Appointment of Ports, Wharves, Custom-houses, Warehouses, and Boarding and Landing Stations)

Power to
declare that
foreign
ports shall
be regarded
as customs
ports for cer-
tain
purposes

13 The ¹[Central Government] may from time to time direct,² by notification in the ³[Official Gazette], that all goods or any specified class of goods imported from or exported to any foreign port to or from a customs port shall, with such limitations and on such conditions (if any) as ⁴[it] thinks fit, be treated for any of the purposes of this Act as goods imported from or exported to a customs port, as the case may be

Power to
declare ware-
housing
ports

14 ⁵[The Chief Customs-authority] may from time to time declare, by notification in the Official Gazette, that any customs port shall be a warehousing port⁶ for the purposes of this Act

Power to
appoint
public ware-
houses

15 At any warehousing port⁷, the ⁸[Chief Customs officer] may, from time to time, ⁹appoint public warehouses wherein dutiable goods may be deposited without payment of duty on the first importation thereof, and may cancel such appointment

Power to
license pri-
vate ware-
houses

16 At any warehousing port⁷ the Chief Customs officer may from time to time license private warehouses¹⁰ wherein dutiable goods may be deposited as aforesaid

Form of
application
for license

Every application for a license for a private warehouse shall be in writing, and shall be drawn up in such form as is from time to time prescribed by the ⁸[Chief Customs officer] and shall be signed by the applicant

Revocation
of license

Every license granted under this section may be cancelled on conviction of the licensee of any offence under this Act relating to warehouses, unless it is otherwise provided in the license, or on the expiration of one month's notice in writing given to the licensee by the Chief Customs-officer

¹ Subs. by the A. O. for 'G. G. in C.'

² For orders issued under s. 13 see Gen. R. and O., Vol. II, p. 68

³ Subs. by the A. O. for 'Gazette of India'

⁴ Subs. by the A. O. for 'he'

⁵ Subs. by s. 4 and Sch. of the Central Board of Revenue Act 1924 (4 of 1924), for 'The L. G., or if so authorized by the L. G., the Chief Customs authority'

⁶ For notifications under the powers conferred by this section, see different local rules and orders

⁷ As to power of Chief Customs authority to appoint a public or license a private warehouse at places other than warehousing ports, see s. 4 (1) of the Inland Bonded Warehouses Act 1896 (8 of 1896)

⁸ Subs. by the Decentralization Act, 1914 (4 of 1914), s. 2 and Sch., Pt. I, for 'Chief Customs authority'

⁹ For instances of notifications appointing warehouses in Bengal and Bombay, see Ben. R. and O. and Bom. R. and O.

¹⁰ No arms, ammunition or military stores may be deposited in any warehouse licensed under s. 16 without the sanction of the Central Government, see the Indian Arms Act, 1878 (11 of 1878), s. 7

(Chapter III — Appointment of Ports, Wharves, Custom houses, Ware houses, and Boarding and Landing Stations Chapter IV — Prohibitions and Restrictions of Importation and Exportation)

17 The ¹[Chief Customs officer] may from time to time appoint in Stations for Customs officers to board and land or near any customs port, stations or limits at or within which vessels arriving at or departing from such port shall bring to for the boarding or landing of officers of Customs, and may unless separate provision therefor has been made under the Indian Ports Act 1875 ² direct it what particular place in any such port vessels, not brought into port by pilots shall anchor or moor ³

CHAPTER IV

PROHIBITIONS AND RESTRICTIONS OF IMPORTATION AND EXPORTATION

18 No goods specified in the following clauses shall be brought Prohibitions whether by land or sea into ⁴British India —

5* * * * *

(b) counterfeit coin or coin which purports to be Queen's coin of India or to be coin made under the Native Coinage Act 1876 but which is not of the established standard in weight or fineness

(c) any obscene book pamphlet paper drawing painting representation figure or article

⁶(d) goods having applied thereto a counterfeit trade mark with in the meaning of the Indian Penal Code or a false trade description within the meaning of the Indian Merchandise Marks Act 1889

(e) goods made or produced beyond the limits of the United Kingdom ⁷[British India and British Burma] and having applied thereto any name or trade mark being or purporting to be ⁸ * * * * * the name or trade mark of any person who is a manufacturer dealer

¹ Substituted by the Decentralization Act 1914 (4 of 1914) s 2 and Sch Pt I for Chief Customs authority

² See now the Indian Ports Act 1908 (15 of 1908)

³ For notifications issued under s 17 in Bengal and Bombay see Ben R and O and Bom R and O

⁴ See notes to s 3 (e) *supra*

⁵ Cl (a) rep by the Indian Copyright Act 1914 (3 of 1914)

⁶ Cl (d) and (e) substituted for the original cl (d) by s 10 (1) of the Indian Merchandise Marks Act 1889 (4 of 1889)

⁷ Substituted by the A O for and British India

⁸ The words "or being a colourable imitation of" rep by the Sea Customs (Amendment) Act 1904 (16 of 1904)

(Chapter IV —Prohibitions and Restrictions of Importation and Exportation)

or trader in the United Kingdom or in British India ¹[or in British Burma] unless—

- (i) the name of trade mark is, as to every application thereof, accompanied by a definite indication of the goods having been made or produced in a place beyond the limits of the United Kingdom, ²[British India and British Burma], and
- (ii) ³[the country in which that place is situated is] in that indication indicated in letters as large and conspicuous as any letter in the name or trade mark, and in the same language and character as the name or trade mark]
- ⁴[(f) piece goods, such as are ordinarily sold by length or by the piece, which—
- (i) have not conspicuously stamped in English numerals on each piece the length thereof in standard yards, or in standard yards and a fraction of such a yard, according to the real length of the piece, and
- (ii) have been manufactured beyond the limits of India or,
- (iii) having been manufactured within those limits, have been manufactured beyond the limits of British India in premises which, if they were in British India, would be a factory as defined in the Indian Factories Act, 1881⁵]

⁶[(g) matches made with white phosphorous]

Power to
prohibit or
restrict

19 The ⁷[Central Government] may from time to time, by notification in the ⁸[Official Gazette], prohibit or restrict the bringing or taking by sea or by land goods of any specified description

¹ Ins by the A O

² Subs by the A O for "and British India"

³ Subs by the Indian Merchandise Marks and Sea Customs Acts Amendment Act, 1891 (9 of 1891), s 3 for 'that place and the country in which it is situated are

⁴ Ins by s 10 (2) of the Indian Merchandise Marks Act, 1889 (4 of 1889)

⁵ See now the Indian Factories Act, 1934 (25 of 1934)

⁶ Ins by s 3 of the White Phosphorous Matches Prohibition Act 1913 (5 of 1913)

⁷ Subs by the A O for 'G G in C'

⁸ Subs by the A O for 'Gazette of India'

⁹ For list of notifications issued under s 19 see Gen R. and O., Vol II, pp 70 to 125

(Chapter IV.—Prohibitions and Restrictions of Importation and Exportation)

into or out of British India ¹[across any customs frontier as defined by the Central Government].

importation
or
exportation
of goods

²[19A. (1) Before detaining any such goods as are or may be specified in or under section 18 or section 19, as the case may be, or taking any further proceedings with a view to the confiscation thereof under this Act, the Chief Customs officer or other officer appointed by the ³[Chief Customs authority] in this behalf may require the regulations under this section, whether as to information, security, conditions or other matters, to be complied with, and may satisfy himself in accordance with those regulations that the goods are such as are prohibited to be imported

Detention
and confisca-
tion of goods
whose im-
portation is
prohibited

(2) The ⁴[Central Government] may ⁵make regulations, either general or special, respecting the detention and confiscation of goods the importation of which is prohibited, and the conditions, if any, to be fulfilled before such detention and confiscation, and may by such regulations determine the information, notices and security to be given, and the evidence requisite for any of the purposes of this section and the mode of verification of such evidence

(3) Where there is on any goods a name which is identical with, or a colourable imitation of, the name of a place in the United Kingdom, ⁶[British India or British Burma], that name, unless accompanied in equally large and conspicuous letters, and in the same language and character, by the name of the country in which such place is situate, shall be treated for the purposes of sections 18 and 19 as if it were the name of a place in the United Kingdom, ⁶[British India or British Burma].

(4) Such regulations may apply to all goods the importation of which is prohibited by section 18 or under section 19 or different regulations may be made respecting different classes of such goods or of offences in relation to such goods

¹ Subs by the A O for the words 'or any specified part thereof, either generally or from or to any specified country, region, port or place beyond the limits of British India' which had been subs for the original words by s 2 of the Sea Customs (Amendment) Act, 1914 (12 of 1914). For notification defining the customs frontier of British India as the frontier whether one or more than one whether sea or land whether exterior or interior, of British India see Gazette of India, Extraordinary dated 1st April 1937 p 433.

² Ins by s 11 of the Indian Merchandise Marks Act, 1889 (4 of 1889).

³ Subs by the Decentralization Act 1914 (4 of 1914), s 2 and Sch Pt I, for L. G.

⁴ Subs by the A O for 'G. G. in C'.

⁵ For regulations in respect of piece goods made under this sub-section see Gen. R. and O. Gazette of India, 1891, Pt I p 187, *ibid*, 1893 Pt I p 714, *ibid*, 1907, Pt I, p 401.

⁶ Subs by the A O for "or British India".

(Chapter I — Levy of, and Exemption from, Customs duties)

22 The ¹[Central Government] may from time to time by notification in the ²[Official Gazette], fix for the purpose of levying duties, tariff values of any goods exported or imported by sea on which customs duties are by law imposed and alter any such values fixed by any Tariff Act³ for the time being in force

Power to fix tariff values.

23 The ¹[Central Government] may from time to time by notification in the ²[Official Gazette] ⁴exempt any goods imported into or exported from British India or into or from any specified port therein, from the whole or any part of the customs duties leviable on such goods

General power to exempt from customs duties

The ⁵[Chief Customs authority] may ⁶[with the previous sanction of the ¹[Central Government]] by special order in each case exempt from the payment of duty, under circumstances of an exceptional nature to be stated in such order any goods on which customs duties are leviable

Power to authorize, in special cases exemption from duty

24 The Customs collector may subject to any general rules relating to the landing and shipping of passengers baggage and the passing of the same through the custom house, which may be made under section 7a, pass free of duty any baggage in actual use and for this purpose may determine subject to any such rules whether any goods shall be treated as baggage in actual use or as goods subject to duty

Baggage in actual use

25 If goods produced or manufactured in British India be imported into any customs port from any foreign port such goods shall be liable to all the duties conditions and restrictions (if any) to which goods of the like kind and value not so produced or manufactured are liable on the first importation thereof

Re imported articles of country produce

Provided that if such importation takes place within three years after the exportation of such goods and it is proved to the satisfaction of the Customs collector that the property in such goods has continued in the person by whom or on whose account they were exported the goods may be admitted without payment of duty

Proviso

26 Any goods produced or manufactured in British India which have been exported therefrom and on the exportation of which any drawback of excise has been received shall on being imported into any

Excise drawback on importation of certain country goods

¹ Subs 1 by the A O for C C in C

² Subs 1 by the A O for Gazette of India

³ See now the Indian Tariff Act 1934 (37 of 1934)

⁴ For such exemptions see Finance Department (Central Revenue) Notification No 33 Customs dated 22nd June 1930 as subsequently amended

⁵ Subs 1 by s 4 and Sch of the Central Board of Revenue Act 1924 (4 of 1924) for L C

⁶ Ins 15 s 11 of the Indian Tariff Act 1894 (8 of 1894)

(Chapter V—Levy of, and Exemption from, Customs duties)

customs port, be subjected, unless the ¹[Chief Customs officer] in any particular case otherwise directs by special order, to payment of excise duty, at the rate to which goods of the like kind and quality are liable at such port

Goods derelict and wreck

27 All goods derelict, jetsam, flotsam and wreck, brought or coming into any place in British India, shall be subject to the same duties, if any, to which goods of the like kind are for the time being subject on importation at any customs port, and shall in other respects be dealt with as if they were imported from a foreign port, unless it be shown to the satisfaction of the Customs collector that such goods are the produce or manufacture of any place from which they are entitled to be admitted duty free

Country produce and stores may be shipped free of duty

28 Provisions and stores produced or manufactured in British India required for use on board of any vessel proceeding to any foreign port, may be shipped free of duty, whether of customs or excise, in such quantities as the Customs collector determines with reference to the tonnage of the vessel, the numbers of the crew and passengers, and the length of the voyage on which the vessel is about to depart

Provided that no rum shall be so shipped on any vessel going on a voyage of less than thirty days' probable duration

Owner to declare real value etc of goods in bill of entry or shipping bill

29 On the importation into, or exportation from, any customs port of any goods, whether liable to duty or not, the owner of such goods shall, in his bill of entry or shipping bill, as the case may be, state the real value, quantity and description of such goods to the best of his knowledge and belief, and shall subscribe a declaration of the truth of such statement at the foot of such bill

Power to require production of invoice etc

In case of doubt, the Customs collector may require any such owner or any other person in possession of any invoice, broker's note, policy of insurance or other document, whereby the real value, quantity or description of any such goods can be ascertained, to produce the same, and to furnish any information relating to such value quantity or description which it is in his power to furnish And thereupon such person shall produce such document and furnish such information

Provided that if the owner makes and subscribes a declaration before the Customs collector to the effect that he is unable, from want of full information to state the real value or contents of any case, package or parcel of goods then the Customs collector shall permit him, previous to the entry thereof (1) to open such case package or parcel and examine the contents in presence of an officer of Customs or (2) to deposit

¹ Subs. by the Decentralization Act 1914 (4 of 1914) s 2 and Sch Pt I for 'Chief Customs authority'

(Chapter V — Levy of, and Exemption from, Customs duties)

such case, package or parcel in a public warehouse appointed under section 15 without warehousing the same, pending the production of such information

30 For the purposes of this Act the real value shall be deemed to be— Real value defined

(a) the wholesale cash price, less trade discount, for which goods of the like kind and quality are sold or are capable of being sold at the time and place of importation or exportation, as the case may be, without any abatement or deduction whatever except (in the case of goods imported) of the amount of the duties payable on the importation thereof or

(b) where such price is not ascertainable, the cost at which goods of the like kind and quality could be delivered at such place without any abatement or deduction except as aforesaid

31 Goods chargeable with duty upon the value thereof but for which a specific value is not fixed by law for the purpose of levying duties thereon shall without unnecessary delay be examined by an officer of Customs. If it appears that the real value of such goods is correctly stated in the bill of entry or shipping bill the goods shall be assessed in accordance therewith Examination of *ad valorem* goods

32 If it appears that such goods are properly chargeable with a higher rate or amount of duty than that to which they would be subject according to the value thereof as stated in the bill of entry or shipping bill, such officer may detain such goods Procedure where such goods are under valued by owner

In every such case the detaining officer shall forthwith give notice in writing to the owner of the goods of their detention and of the value thereof as estimated by him and the Customs collector shall within two clear working days after such detention or within such reasonable period as may with the consent of the parties be arranged determine either to deliver such goods on payment of duty charged according to the entry of such owner or to retain the same for the use of ¹[the Central Government]

If the goods be retained for the use of ¹[the Central Government], the Customs collector shall cause the full amount stated in the bill as their real value to be paid to the owner in full satisfaction for such goods in the same manner as if they had been transferred by ordinary sale and shall after due notice in the ²[Official Gazette] or some local

¹ Subs. by the A. O. for Govt.

² Subs. by the A. O. for local official Gazette

(Chapter V.—Levy of, and Exemption from, Customs-duties.)

newspaper, and without unnecessary delay, cause them to be put up to public auction in wholesale lots for cash on delivery

If the Customs collector deems the highest offer made at such sale to be inadequate, he may either adjourn the sale to some other day, to be notified as aforesaid, or buy in the goods, and without unnecessary delay dispose of them for the benefit of ¹[the Central Government].

If the proceeds arising from such sale exceed the sum paid to the owner, together with (in the case of goods imported) the duty to which the goods are liable and all charges incurred by ¹[the Central Government] in connection with them, a portion not exceeding one half of the overplus shall, at the discretion of the Chief Officer of Customs, be payable to the officer who detected the undervaluation of the goods

Nothing in this section shall prevent the Chief Officer of Customs, when he has reason to believe that any such undervaluation was solely the result of accident or error, from permitting the owner of the goods, on his application for that purpose, to amend such entry, on payment of such increased rate of duties on the excess of the amended over the original valuation, or on such other terms as the Chief Officer of Customs may determine

Abatement
allowed
on damaged
goods

33 If, on the first examination of any such goods under section 31, the owner thereof states in writing that such goods are, in consequence of damage sustained before delivery of the bill of entry, of value less than that stated in such bill, the Customs-collector, on being satisfied of the fact, may allow abatement of duty accordingly

Reduced
duty how
determined

The reduced duty to be levied on such goods may be ascertained by either of the following methods, at the option of the owner —

- (a) the real value of such goods may be fixed on appraisement by an officer of Customs and the duty may be assessed on the value so fixed; or
- (b) the goods may, after due notice in the ²[Official Gazette] or some local newspaper, be sold by public auction at such time (within thirty days from the date of delivery of the bill of entry), and at such place, as the Customs collector appoints, and the duty may be assessed on the gross amount realized by such sale without any abatement or deduction, except (in the case of goods imported) of so much as represents the duties payable on the importation thereof

¹ Subs by the A O for 'Govt'

² Subs by the A O for 'local official Gazette'

(Chapter V — Levy of, and Exemption from, Customs duties)

34 When any goods, the value of which has been fixed by law for the purpose of levying duties thereon, have, before delivery of the bill of entry, deteriorated to the extent of more than one tenth of their value, the duty on such goods shall if the owner thereof so desires, be assessed *ad valorem*

Deterioration of tariff value goods

The real value of such goods shall be ascertained as provided in section 33, and the duty shall be assessed thereon

¹[34A. Where the Customs collector is satisfied that any goods on which duties are levied on quantity and not on value and which are of a kind to which the ²[Central Government] has by notification in the ³[Official Gazette] declared that the provisions of this section shall apply, have before delivery of the bill of entry deteriorated to the extent of more than one tenth of their value, he may allow an abatement of duty proportionate to the extent of such deterioration]

Abatement of duty on goods on which duty is levied on quantity

35 No abatement of duty on account of ⁴[any deterioration] shall be allowed on wine, spirit or beer or ⁵[save as provided by section 34A] on any other articles on which duties are levied on quantity and not on value

No abatement when duty is levied on quantity

36 Except as provided in section 94 no amendment of a bill of entry or shipping bill relating to goods assessed for duty on the declared value quantity or description thereof shall be allowed after such goods have been removed from the custom house

Restriction on amendment of bill of entry or shipping bill

37 The rate of duty and the tariff valuation (if any) applicable to any goods imported shall be the rate and valuation in force on the date on which the bill of entry thereof is delivered to the Customs collector under section 86

Alteration of import duty, or tariff valuation

⁶[Provided that if such goods are warehoused under this Act the rate and valuation (if any) applicable thereto shall be the rate and valuation in force on the date ⁷[of the actual removal of such goods from the warehouse in the case of goods delivered out of a warehouse for home consumption and in the case of goods delivered out of a warehouse for removal under bond to be re-warehoused where the duty is paid on such goods without their being re-warehoused the rate and valuation (if any) in force on the date on which duty is paid]]

¹ Inserted by s 2 of the Sea Customs (Amendment) Act 1927 (8 of 1927)

² Substituted by the A.O. for G.O. in C

³ Substituted by the A.O. for Gazette of India

⁴ Substituted by the Sea Customs (Amendment) Act 1927 (8 of 1927) s 3 for damage

⁵ Inserted by s 3 *ibid*

⁶ This provision was substituted for the original provision by s 1 of the Sea Customs Act (1878) Amendment Act 1889 (8 of 1889)

⁷ Substituted for on which application is made to clear such goods from the warehouse for home consumption by s 2 of the Sea Customs (Amendment) Act 1915 (9 of 1915)

(Chapter V—Levy of, and Exemption from, Customs duties)

Explanation—A bill of entry shall, for the purposes of this section, be deemed to be delivered when it is first presented to the proper officer of Customs

Alteration of
export duty
or tariff
valuation

38 The rate of duty and tariff valuation (if any) applicable to any goods exported shall be the rate and valuation in force when a shipping bill of such goods is delivered under section 137

1[Provided that where the shipment of any goods is permitted without a shipping bill or in anticipation of the delivery of a shipping bill, the rate of duty and tariff valuation if any applicable shall be the rate and valuation in force at the time when shipment of the goods commences]

Payment of
duties short
levied or
erroneously
refunded

39 When customs duties or charges have been short levied through inadvertence error collusion or misconstruction on the part of the officers of Customs or through misstatement as to real value quantity or description on the part of the owner

or when any such duty or charge after having been levied has been, owing to any such cause erroneously refunded

the person chargeable with the duty or charge so short levied or to whom such refund has erroneously been made shall pay the deficiency or repay the amount paid to him in excess on demand being made within three months from the date of the first assessment or making of the refund

and the Customs collector may refuse to pass any goods belonging to such person until the said deficiency or excess be paid or repaid

No refund
of charges
erroneously
levied or
paid unless
claimed
within three
months

40 No customs duties or charges which have been paid and of which repayment wholly or in part is claimed in consequence of the same having been paid through inadvertence error or misconstruction shall be returned unless such claim is made within three months from the date of such payment

Power to
give credit
for and keep
account
current of
duties and
charges

41 The Customs collector may if he thinks fit instead of requiring payment of customs duties and charges due from any mercantile firm or public body at the time such duties and charges are payable under this Act, keep with such firm or body an account current of such duties and charges Such account shall be settled at intervals not exceeding one month and such firm or body shall make a deposit or furnish security sufficient in the opinion of the Customs collector to cover the amount which may at any time be due from them in respect of such duties and charges

(Chapter VI — Drawback)

CHAPTER VI

DRAWBACK

42 When any goods capable of being easily identified, which have been imported by sea into any customs port from any foreign port and upon which duties of customs have been paid on importation are re-exported by sea from such customs port to any foreign port or as provisions or stores for use on board a ship proceeding to a foreign port seven eighths ¹[or in the case of silver bullion the whole] of such duties shall except as otherwise hereinafter provided be repaid as drawback

Drawback allowable on re export

Provided that in every such case the goods be identified to the satisfaction of the Customs collector at such customs port and that the re export be made within two years from the date of importation as shown by the records of the custom house or within such extended term as the Chief Customs authority ²[or the Chief Customs officer] on sufficient cause being shown in any case determines

Conditions for grant of drawback

²[Provided further that the Chief Customs officer shall not extend the term to a period exceeding three years]

43 When any goods having been charged with import duty at one customs port and thence exported to another are re exported by sea as aforesaid drawback shall be allowed on such goods as if they had been so re exported from the former port

Drawback on goods exported to customs port and thence to foreign port
Proviso

Provided that in every such case the goods be identified to the satisfaction of the officer in charge of the custom house at the port of final exportation and that such final exportation be made within three years from the date on which they were first imported into British India

³[43A (1) Notwithstanding anything hereinbefore contained the repayment of duty as drawback in respect of goods which have been taken into use between importation and re exportation shall be subject to the provisions of the rules made under sub section (2)

Drawback on goods taken into use between importation and re exportation

(2) The ⁴[Central Government] may subject to the condition of previous publication from time to time by notification in the ⁵[Official Gazette] make rules in respect of goods which have been taken into use between importation and re exportation

(1) modifying the amount of duty which shall be repaid as drawback on any such good or class of such goods or

¹ In by the Indian Act 1930 15 of 1930

² In by the Decentralization Act 1914 (4 of 1914) s 2 and Sch 1 t 1

³ In by the Sea Customs (Amendment) Act 1934 (21 of 1934) s 2

⁴ Subs by the A O for G O in C

⁵ Subs by the A O for Gazette of India

(Chapter 11 — Drawback)

(b) prohibiting the repayment of duty as drawback on any such goods or class of such goods, or

(c) varying the conditions for the grant of drawback on any such goods or class of such goods by restricting the period after importation within which the goods must be re-exported]

Drawback
of duties
on wine and
spirit allow-
ed for
officers of
Navy

44 A drawback of the whole of the customs duties shall be allowed on wine and spirit intended for the consumption of any officer of Her Majesty's Navy on board of any of Her Majesty's ships in actual service unless such wine and spirit have been warehoused without payment of duty on the first entry thereof

The quantity of wine and spirit on which drawback may be so allowed in any one year for the use of such officers shall not exceed the quantities hereinafter allowed for each such officer respectively, that is to say—

	Gallons
For every Admiral	1260
Vice Admiral	1020
Rear Admiral	840
Captain of 1st and 2nd rate	630
Captain of 3rd, 4th and 5th rate	420
Captain of an inferior rate	210
Lieutenant or other Commanding Officer Marine Officer Master Purser or Surgeon	102

Persons
entitled
to such
drawback
for wine
or spirit
drawn
back to
declare name
and rank of
officer claim-
ing same

45 Every person claiming and claiming drawback for wine or spirit, as provided in section 44 shall state in the shipping bill the name of the officer for whose use such wine or spirit is intended and of the ship in which he serves as well as the place and date of the first supply for which drawback was allowed

All such wine and spirit shall be delivered into the charge of the proper officers of Customs at the port of shipment to be shipped under their care and when the officer commanding the ship has certified the receipt of such wine and spirit into his charge and any such officer of Customs has certified the shipment the drawback shall be paid to the person entitled to receive the same

Transfer of
drawback
on wine
or spirit from
one naval
officer
to another

46 The Customs collector may permit the transfer of any such wine or spirit from one naval officer to another naval officer on board of the same or of any other such vessel as part of his authorised quantity

or may permit the transshipment of any such wine or spirit from one vessel to another for the use of the same naval officer

or the re-landing and warehousing of any such wine or spirit for future re-shipment

(Chapter VI — Drawback)

The Customs collector may also receive back the duties for any such wine or spirit, and allow the same to be cleared for home consumption

47 Provisions and stores for the use of Her Majesty's Navy or of any officer thereof which are subject to duty may, in like manner, be transferred, transhipped or re landed and warehoused, free of duty, Provisions and stores for Her Majesty's Navy

and where duties have been paid on any such provisions or stores required for shipment, drawback of such duties, whether of customs or excise, shall be allowed on receipt of an application in writing from the officer commanding the ship for which they are intended, or from some other officer duly authorized to make such application

48 The provisions of sections 44, 45, 46 and 47 as to officers of Her Majesty's Navy apply also to officers of Her Majesty's ¹[Indian Navy] on board of any of the ships of such ²[Indian Navy] proceeding to any port out of India and the rules prescribed by section 47 as to provisions and stores for the use of Her Majesty's Navy apply also to provisions and stores for the use of such ²[Indian Navy] Indian Navy

49 The ³[Central Government] may from time to time by notification in the ⁴[Official Gazette] — To order to declare what goods are identifiable and to prohibit drawback in case of specified foreign port

(a) declare what goods shall for the purpose of this Chapter be deemed to be capable of being easily identified and

(b) prohibit the payment of drawback upon the re exportation of goods ⁵[or any specified goods or class of goods] to any specified foreign port ⁶ * *

50 Notwithstanding anything hereinbefore contained no drawback shall be allowed— When no drawback allowed

(a) upon goods not included in the export manifest or

(b) where the goods to be exported are of less value than the amount of drawback claimed on

(c) where the claim is for drawback amounting in respect of any single shipment to less than five rupees and the Customs collector thinks fit to reject it or

(d) on salt salted fish or opium

¹ Subs. by the Amending Act 1934 (35 of 1934) s. 2 and Sch. for Indian Marine and Marine Survey

² Subs. by s. 2 and Sch. of 1 for Marine or Survey

³ Subs. by the A.O. for G.O. in C

⁴ Subs. by the A.O. for Gazette of India

⁵ Subs. by the Sea Customs (Amendment) Act 1914 (12 of 1914) s. 4

⁶ The words in India rep. by s. 4 *ibid*

(Chapter VI — Drawback Chapter VII — Arrival and Departure of Vessels)

Time to
claim draw
back*

51 No drawback shall be allowed unless the claim to receive such drawback be made and established at the time of re export

When pay
ment made

No such payment of drawback shall be made until the vessel carrying the goods has put out to sea, or unless payment be demanded within six months from the date of entry for shipment

Declaration
by parties
claiming
drawback

52 Every person, or his duly authorized agent, claiming drawback on any goods duly exported, shall make and subscribe a declaration that such goods have been actually exported, and have not been re landed and are not intended to be re landed at any customs port and that such person was at the time of entry outwards and shipment and continues to be entitled to drawback thereon

CHAPTER VII

ARRIVAL AND DEPARTURE OF VESSELS

Arrival and Entry of Vessels inwards

Power to
fix places
beyond
which in
ward bound
vessels are
not to pro
ceed until
manifest
delivered

53 The ¹[Chief Customs authority] may, by notification in the 2* Official Gazette fix a place in any river or port, beyond which no vessel arriving shall pass until a manifest has been delivered to the pilot, officer of Customs or other person duly authorized to receive the same

Delivery of
manifest
when vessel
anchors be
low place so
fixed

If, in any river or port wherein a place has been fixed by the ¹[Chief Customs authority] under this section the master of any vessel arriving remains outside or below the place so fixed, such master shall, nevertheless within twenty four hours after the vessel anchors, deliver a manifest to the pilot, officer of Customs or other person authorised to receive the same

Delivery of
manifest
if it is no
place has
been so fix
ed

54 If any vessel arrives at any customs port in which a place has not been so fixed the master of such vessel shall within twenty four hours after such vessel has anchored within the limits of the port deliver a manifest to the pilot officer of Customs or other person authorized to receive the same

¹ Subs by the Decentralization Act 1914 (4 of 1914) s 2 and Sch Pt I for L C

² The word local rep by s 4 and Sch of the Central Board of Revenue Act 1924 (4 of 1924)

(Chapter VII.—Arrival and Departure of Vessels)

55 Every manifest shall be signed by the master, and shall specify all goods imported in such vessel showing separately all goods (if any) intended to be landed, transhipped or taken on to another port, and all ship's stores intended for consumption in port or on the homeward voyage and shall contain such further particulars and be made out in such form as the ¹[Chief Customs officer] may from time to time direct

Signature
and contents
of manifest

The Customs collector shall permit the master to amend any obvious error in the manifest or to supply any omission which in the opinion of such Collector results from accident or inadvertence by furnishing an amended or supplementary manifest

An amendment
of errors in
manifest

and may if he thinks fit levy thereon such fee as the ¹[Chief Customs officer] from time to time directs

Except as herein provided no import manifest shall be amended

56 The person receiving a manifest under section 53 or 54 shall countersign the same and enter thereon such particulars as the ¹[Chief Customs officer] from time to time directs in this behalf

Duty of
person re-
ceiving
manifest

57 No vessel arriving in any customs port shall be allowed to break bulk until a manifest has been delivered as hereinbefore provided nor until a copy of such manifest together with an application for entry of such vessel inwards has been presented by the master to the Customs collector and an order has been given thereon for such entry

Bulk not to
be broken
until mani-
fest etc
delivered
and vessel
entered in
wards

58 The master shall if required so to do by the Customs-collector at the time of presenting such application deliver to the Customs collector the bill of lading or a copy thereof for every part of the cargo laden on board and any port clearance ticket or other paper granted in respect of such vessel at the place from which she is stated to have come and shall answer all such questions relating to the vessel cargo crew and voyage as are put to him by such officer

Master if
required to
deliver bill
of lading
etc to cus-
toms collec-
tor
and answer
questions

The Customs collector may if any requisition or question made or put by him under this section is not complied with or answered refuse to grant such application

59 Notwithstanding anything contained in section 57 the Customs collector may grant prior to receipt of the manifest and to the entry inwards of the vessel a special pass² permitting bulk to be broken

Special pass
for breaking
bulk

¹ S. 54 by the Decentralisation Act 1914 (4 of 1914) s. 2 and Sch. Pt. I for Chief Customs authority

² For rules in force in Bombay and Karachi as to special passes for breaking bulk see Bom. R. and O.

For rules in force in Madras under ss. 59 and 57 see Mad. R. and O.

(Chapter VII—Arrival and Departure of Vessels)

The granting of such pass shall be subject to such rules as may from time to time be made by the Chief Customs authority

Manifest etc may be delivered by ship's agent

60 Notwithstanding anything contained in section 53, 54, 57 or 58, the Customs collector may accept from the ship's agent, in lieu of the master, delivery of the manifest or of any other document required by those sections to be delivered by the master

Entry outwards, Port clearance and Departure of Vessels

Order for entry outwards to be obtained before export cargo is shipped

61 No vessel shall take on board any part of her export cargo until a written application for entry of such vessel outwards, subscribed by the master of such vessel, has been made to the Customs collector or before an order has been given thereon by such officer for such entry

Every application made under this section shall specify the name, tonnage and national character of the vessel the name of the master, and the name of every place for which cargo is to be shipped

No vessel to depart without port clearance

62 No vessel whether laden or in ballast, shall depart from any customs port until a port clearance has been granted by the Customs collector or other officer duly authorized to grant the same

No pilot to take charge of vessel proceeding to sea without production of port clearance

And no pilot shall take charge of any vessel proceeding to sea, unless the master of such vessel produces a port clearance

Application for port clearance Master on applying for port clearance to deliver documents and answer questions

63 Every application for port clearance shall be made by the master at least twenty four hours before the intended departure of the vessel

The master shall at the time of applying for port clearance—

(a) deliver to the Customs collector a manifest in duplicate in such form¹ as may from time to time be prescribed by the ²[Chief Customs officer] signed by such master specifying all goods to be exported in the vessel and showing separately all goods and stores entered in the import manifest, and not landed or consumed on board or transhipped,

(b) deliver to the Customs collector such shipping bills or other documents as such Customs collector acting under the general instructions of such ²[Chief Customs officer] requires, and

(c) answer to the proper officer of Customs such questions touching the departure and destination of the vessel as are demanded of him

¹ For form prescribed in Madras see Mad R and O

² Substituted by the Decentralization Act 1914 (4 of 1914) s 2 and Sch Pt I for Chief Customs authority

(Chapter VII — Arrival and Departure of Vessels)

The provisions of section 55 relating to the amendment of import manifests shall *mutatis mutandis*, apply also to export manifests delivered under this section

64 The Customs collector may refuse port clearance to any vessel until— Power to
refuse port
clearance

(a) the provisions of section 63 are complied with,

(b) all port dues and other charges and penalties due by such vessel or by the owner or master thereof and all duties payable in respect of any goods shipped therein have been duly paid or their payment secured by such guarantee, or by deposit at such rate as such Customs collector directs,

(c) the ship's agent (if any) delivers to the Customs collector a declaration in writing to the effect that he will be liable for any penalty imposed under section 167 No 17 and furnishes security for the discharge of the same

(d) the ship's agent (if any) delivers to the Customs collector a declaration in writing to the effect that such agent is answerable for the discharge of all claims for damage or short delivery which may be established by the owner of any goods comprised in the import cargo in respect of such goods

A ship's agent delivering a declaration under clause (c) of this section shall be liable to all penalties which might be imposed on the master under section 167 No 17 and a ship's agent delivering a declaration under clause (d) of this section shall be bound to discharge all claims referred to in such declaration

65 When the Customs collector is satisfied that the provisions of section 63 and if necessary of clauses (b) and (c) and (d) of section 64, have been complied with he shall grant a port clearance to the master, and shall return at the same time to such master one copy of the manifest duly countersigned by the proper officer of Customs Grant of
port-clearance

66 Notwithstanding anything contained in sections 64 and 65, the Customs collector may (subject to such rules¹ as the Chief Customs authority may from time to time prescribe) grant a port-clearance to the master when the ship's agent furnishes such security as the Customs Grant of
port clear-
ance on
security
of ship's
agent.

¹ For such rules in Madras see Mad R. and O.

*(Chapter VII—Arrival and Departure of Vessels Chapter VIII—
General Provisions affecting Vessels in Port)*

collector deems sufficient for duly delivering, within five days from the date of such grant, the manifest and other documents specified in section 63

CHAPTER VIII

GENERAL PROVISIONS AFFECTING VESSELS IN PORT

Power to
depute
Customs
officer to
board ships

67 The Customs collector at any customs port may at any time depute at his discretion one or more officers of Customs to board any vessel in or arriving at such port

Duty of such
officer

Every officer of Customs so sent shall remain on board of such vessel by day and by night unless or until the Customs collector otherwise orders

Officer and
servant to
be received

68 Whenever an officer of Customs is so deputed on board of any vessel, the master of such vessel shall be bound to receive on board such officer, and one servant of such officer, and to provide such officer and servant with suitable shelter and accommodation, and likewise with a due allowance of fresh water, and with the means of cooking on board

Accommoda-
tion of officer
and servant

Officers of
Customs to
have free
access to
every part
of ship and
may seal
and secure
goods

69 Every officer of Customs so deputed shall have free access to every part of the vessel and may fasten down any hatchway or entrance to the hold and mark any goods before landing, and lock up, seal, mark or otherwise secure any goods on board of such vessel

Power to
authorize
search and
opening of
locks

If any box, place or closed receptacle in any such vessel be locked, and the key be withheld, such officer shall report the same to the Customs collector, who may thereupon issue to the officer on board, or to any other officer under his authority, a written order to search

On production of such order, the officer bearing the same may require that any such box, place or closed receptacle be opened in his presence, and, if it be not opened upon his requisition, he may break open the same

Goods not
to be
shipped,
discharged
or water
borne except
in presence
of officer

70 Unless with the written permission of the Customs collector or in accordance with a general permission granted under section 74, no goods other than passengers baggage, or ballast urgently required to be shipped for the vessel's safety, shall be shipped or water borne to be shipped or discharged from any vessel in any customs port, except in the presence of an officer of Customs

(Chapter VIII —General Provisions affecting Vessels in Port)

71 When an officer of Customs is deputed under section 67 to remain on board a vessel the tonnage of which does not exceed six hundred tons, a period of thirty working days, reckoned from the date on which he boards such vessel or such additional period as the Customs collector directs, shall be allowed for the discharge of import cargo and the shipment of export cargo on board of such vessel

Period allowed for discharge and shipment of cargo

One additional day shall in like manner be allowed for every fifty tons in excess of six hundred

No charge shall be made for the services of a single officer of Customs for such allowed number of working days or for the services of several such officers (if available) for respective periods not exceeding in the aggregate such allowed number of working days

If the period occupied in the discharge and shipment of cargo be in excess of thirty working days together with the additional period (if any) allowed under this section the vessel shall be charged with the expense of the officer of Customs at a rate not exceeding five rupees per diem (Sundays and holidays excepted) for such excess period

Consequence of exceeding same

In calculating any period allowed or any charge made under this section the period (if any) during which a vessel after the completion of the discharge of import cargo and before commencing the shipment of export cargo is laid up by the withdrawal of the officer of Customs, upon application from the master shall be deducted

Allowance for period during which vessel is laid up

72 Except with the written permission of the Customs collector, no goods other than passengers baggage shall in any customs port be discharged from any vessel or be shipped or water borne to be shipped —

Goods not to be landed, etc on Sundays or holidays without permission, or except within fixed hours

(a) on any Sunday or on any holiday or day on which the discharge or shipping of cargo as the case may be is prohibited by the Chief Customs authority

(b) on any day except between such hours as such authority from time to time appoints by notification² in the Official Gazette

73 No goods shall in any customs port be landed at any place other than a wharf or other place duly appointed for that purpose, and

Goods not to be shipped etc except at wharves

unless with the written permission of the Customs collector, or when a general permission has been granted under section 74, no goods shall in any customs port be shipped or water borne to be shipped from any place other than a wharf or other place duly appointed for that purpose

¹ For rules issued under this section in Madras, see Mad R. and O

² For instance of such notification see Bom R. and O

(Chapter VIII —General Provisions affecting Vessels in Port)

Power to
exempt from
sections 70
and 73

74 Notwithstanding anything contained in section 70 or 73, the Chief Customs authority may, by notification in the 1st Official Gazette, give general permission for goods to be shipped or water borne to be shipped in any customs port from all or any places not duly appointed² as wharves and without the presence or authority of an officer of Customs

Power to
make rules
regarding
baggage and
mails

75 The Chief Customs authority may from time to time make rules³ for the landing and shipping of passengers baggage and the passing of the same through the custom house and for the landing, shipping and clearing of parcels forwarded by Her Majesty's or other mails, or by other regular pickets and passenger vessels

Landing
fees

When any baggage or parcels is or are made over to an officer of Customs for the purpose of being landed, a fee of such amount as the 4[Chief Customs authority] from time to time directs shall be chargeable thereon, as compensation for the expense and trouble incurred in landing and depositing the same in the custom house

Boat note

576 When any goods are water borne for the purpose of being landed from any vessel and warehoused or cleared for home consumption, or of being shipped for exportation on board of any vessel, there shall be sent, with each bill of lading or other separate despatch a boat note specifying the number of packages so sent and the marks and numbers or other description thereof

Each boat note for goods to be landed shall be signed by an officer of the vessel, and likewise by the officer of Customs on board, if any such officer be on board, and shall be delivered on arrival to any officer of Customs authorized to receive the same

Each boat note for goods to be shipped shall be signed by the proper officer of Customs, and, if an officer of Customs is on board of the vessel on which such goods are to be shipped, shall be delivered to such officer. If no such officer be on board, every such boat note shall be delivered to the master of the vessel, or to an officer of the vessel appointed by him to receive it

¹ The word local rep by s 4 and Sch of the Central Board of Revenue Act 1924 (4 of 1924)

² For orders in force under s 74 see different local rules and orders

³ For such rules see local rules and orders

⁴ Subs by the Decentralization Act 1914 (4 of 1914) s 2 and Sch, Pt I, for L. G

⁵ The operation of this section in the port of Madras so far as it relates to export boat notes has been suspended see Fort St George Gazette 1883 Pt I, p 830

(Chapter VIII—General Provisions affecting Vessels in Port)

The officer of Customs who receives any boat note of goods landed, and the officer of the Customs master or other officer, as the case may be who receives any boat note of goods shipped shall sign the same and note thereon such particulars as the ¹[Chief Customs officer] may from time to time direct

The ²[Chief Customs authority] may from time to time, by notification in the ³* Official Gazette suspend the operation of this section in any customs port or part thereof

77 All goods water borne for the purpose of being landed or shipped shall be landed or shipped without any unnecessary delay

Goods water borne to be forth with landed or shipped

78 Except in cases of imminent danger no goods discharged into or loaded in any boat for the purpose of being landed or shipped shall be transhipped into any other boat without the permission of an officer of Customs

Such goods not to be transhipped without permission

79 The ²[Chief Customs authority] may declare with regard to any customs port by notification in the ³* Official Gazette that, after a date therein specified no boat not duly licensed and registered shall be allowed to ply as a cargo boat for the landing and shipping of mer-
chandise within the limits of such port

Power to prohibit plying of unlicensed cargo boats

In any port with regard to which such notification has been issued, the Chief Officer of Customs or other officer whom the ²[Chief Customs authority] appoints in this behalf, may, subject to such ⁴rules and on payment of such fees as the ²[Chief Customs authority] from time to time prescribes by notification in the ³* Official Gazette, issue licenses for and register cargo boats Such officer may also, subject to rules so prescribed cancel any license so issued

Issue of licenses and registration of cargo-boats

80 The Customs collector may, whenever he thinks fit, require that goods stowed in bulk and brought by sea or intended for exportation, shall be weighed or measured on board ship before landing or after shipment and may levy duty according to the result of such weighing or measurement

Power to require goods to be weighed or measured on board before landing or shipment

¹ Subs by the Decentralization Act 1914 (4 of 1914) s 2 and Sch Pt I, for Chief Customs authority

² Subs for I G 1617

³ The word local replaced by s 4 and Sch of the Central Board of Revenue Act 1924 (4 of 1924)

⁴ As to Cargo boat Rules force see different local rules and orders

(Chapter IX —Of Discharge of Cargo and Entry Inwards of Goods)

CHAPTER IX.

OF DISCHARGE OF CARGO AND ENTRY INWARDS OF GOODS.

Discharge
of cargo may
commence
on receipt of
due permis-
sion

81. When an order for entry inwards of any vessel which has arrived in any Customs-port or a special pass permitting such vessel to break bulk has been given, the discharge of the cargo of such vessel may be proceeded with

Goods not
to leave
ship unless
entered in
manifest

82 Except as otherwise provided in this Act, no goods shall be allowed to leave any such vessel, unless they are entered in the original manifest of such vessel, or in an amended or supplementary manifest received under section 55

Procedure
in respect
of goods not
landed
within time
allowed

183 If the owner of any goods (except such as have been shown in the import manifest as not to be landed) does not land such goods within such period as is specified in the bill of lading of such goods, or, if no period is so specified, within such number of working days, not exceeding fifteen, after the entry of the vessel importing the same, as the ²[Chief Customs authority] from time to time appoints by notification in the Official Gazette, or

if the cargo of any vessel, with the exception of only a small quantity of goods, has been discharged previously to the expiration of the period so specified or appointed, as the case may be—

the master of such vessel or, on his application, the proper officer of Customs, may then carry such goods to the custom-house, there to remain for entry

The Customs collector shall thereupon take charge of, and grant receipts for, such goods.

and if notice in writing has been given by the master that the goods are to remain subject to a lien for freight, primage, general average, or other charges of a stated amount, the Customs collector shall hold such goods until he receives notice in writing that the said charges are paid

Power to
land small
parcels

84 At any time after the arrival of any vessel the Customs collector may, with the consent of the master of such vessel, cause any small package or parcel of goods to be carried to the custom house, there to remain for entry, in charge of the officers of Customs, during the remainder of the working days allowed under this Act for the landing of such package or parcel

¹ For notification issued under this section in Madras, see Fort St George Gazette, 1883, Pt I, p 830, in Bombay, see Bom R and O

² Subs by the Decentralization Act, 1914 (4 of 1914), s 2 and Sch, Pt I, for "L. G."

(Chapter IX —Of Discharge of Cargo and Entry Inwards of Goods)

If any package or parcel so carried to the custom-house remains unclaimed on the expiration of the number of working days so allowed for its landing, or at the time of the clearance outwards of the vessel from which it was landed, the master may give such notice as is provided in section 83, and the officer in charge of the custom house shall thereupon hold such package or parcel as provided in that section

Notice re-
garding un-
claimed
packages

85 Notwithstanding anything contained in sections 83 and 81, the Customs collector in any customs port to which the 1[Chief Customs-authority] by notification in the 2* Official Gazette declares this section to be 3applicable, may permit the master of any vessel, immediately on receipt of an order under section 57 or a special pass under section 59 to discharge the cargo of such vessel or any portion thereof into the custody of the ship's agents if willing to receive the same, for the purpose of landing the same forthwith—

Power to
permit
immediate
discharge

(a) at the custom house or any specified landing place or wharf,
or

(b) at any landing place or wharf belonging to any Port Commissioners Port Trust or other public body or company

Any ship's agent so receiving such cargo or portion shall be bound to discharge all claims for damage or short delivery which may be established in respect of the same by the owner thereof and shall be entitled to recover from such owner his charges for service rendered, but not for commission or the like, where any agent for the landing of such cargo or portion has been previously appointed by the owner and such appointment is unrevoked

The Customs collector shall take charge of all goods discharged under clause (a) of this section and otherwise proceed in relation thereto as provided in sections 83 and 88

A public body or company at whose landing place or wharf any goods are discharged under clause (b) of this section shall not permit the same to be removed without an order in writing from the Customs-collector

86 The owner of any goods imported shall, on the landing thereof from the importing ship, make entry of such goods for home consump-

Entry for
home con-
sumption or
for housing

1 Subs. by the Decentralization Act 1914 (4 of 1914) s. 2 and Sch. Pt. I, for L. G.

2 The word "local" rep. by s. 4 and Sch. of the Central Board of Revenue Act, 1924 (4 of 1924)

3 For notification declaring the section applicable to the port of—

Calcutta see Calcutta Gazette 1904 Pt. I p. 1121

Madras see Fort St. George Gazette 1885 Pt. I p. 55

Bombay see Bom. R. and O.

(Chapter IX —Of Discharge of Cargo and Entry Inwards of Goods)

tion or warehousing by delivering to the Customs collector¹ a bill of entry thereof in duplicate, in such form and containing such particulars, in addition to the particulars specified in section 29, as may, from time to time, be prescribed by the 2[Chief Customs officer]

The particulars of such entry shall correspond with the particulars given of the same goods in the manifest of the ship

Assessment
of dutiable
goods

87 On the delivery of such bill the duty (if any) leviable on such goods shall be assessed, and the owner of such goods may then proceed to clear the same for home consumption, or warehouse them, subject to the provisions hereinafter contained

Procedure
in case of
goods not
cleared or
warehoused
within four
months after
entry of
vessel

88 If any goods are not entered and cleared for home consumption, or warehoused within four months from the date of entry of the vessel, such goods may, after due notice to the owner, if his address can be ascertained, and in the local official Gazette, be sold by public auction, and the proceeds thereof shall be applied, first, to the payment of freight, primage and general average, if the goods are held by the Customs-collector subject to such charges under notice given under section 83, 84 or 85, next to the payment of the duties which would be leviable on such goods if they were then cleared for home consumption, and next to the payment of the other charges (if any) payable to the Customs collector in respect of the same

The surplus, if any shall be paid to the owner of the goods, on his application for the same provided that such application be made within one year from the sale of the goods, or that sufficient cause be shown for not making it within such period

Power to
direct sale
of perish-
able goods

If any goods of which the Customs-collector has taken charge under section 83, 84 or 85 be of a perishable nature, the Customs collector may at any time direct the sale thereof, and shall apply the proceeds in like manner

PROVIDE

Provided that, where any goods liable to be sold under this section are arms, ammunition or military stores, they may be sold or otherwise disposed of at such place (whether within or without British India), and in such manner as 3[the Chief Customs authority may, with the concurrence of the 4[Central Government], direct]

¹ For forms of bill of entry prescribed for use in Madras, see Fort St George Gazette 1833, Pt I p 836

² Substituted by the Decentralization Act 1914 (4 of 1914), s 2 and Sch, Pt I, for Chief Customs authority

³ Subs for the L G may from time to time direct by s 4 and Sch of the Central Board of Revenue Act 1924 (4 of 1924)

⁴ Subs by the A O for L G

Chapter IX —Discharge of Cargo and Entry inwards of Goods
 Chapter X —Of Clearance of Goods for Home Consumption
 Chapter XI —Warehousing)

Provided also that nothing in this section shall authorize the removal or home consumption of any dutiable goods without payment of duties of customs thereon

CHAPTER X

OF CLEARANCE OF GOODS FOR HOME CONSUMPTION

89 When the owner of any goods entered for home consumption, and if such goods be liable to duty) assessed under section 87, has paid the import duty (if any) assessed on such goods and any charges payable under this Act in respect of the same, the Customs officer may make an order clearing the same, and such order shall be sufficient authority for the removal of such goods by the owner

Clearance for home consumption

CHAPTER XI

WAREHOUSING

Of the Admission of Goods into a Warehouse

90 When any dutiable goods have been entered for warehousing and assessed under section 87, the owner of such goods may apply for leave to deposit the same in any warehouse appointed or licensed under this Act

Application to warehouse

91 Every such application shall be in writing signed by the applicant, and shall be in such form as is from time to time prescribed by the Chief Customs authority¹

Form of application

92 When any such application has been made in respect of any goods, the owner of the goods to which it relates shall execute a bond, binding himself in a penalty of twice the amount of duty assessed under section 87 on such goods,—

Warehouse bond

(a) to observe all rules prescribed by this Act in respect of such goods,

(b) to pay, on demand, all duties, rent and charges claimable on account of such goods under this Act, together with interest on the same from the date of demand, at such rate² not exceeding six per cent per annum as is for the time being fixed by the Chief Customs authority, and

¹ For bill of entry for bond prescribed for Madras see Fort St George Gazette, 1833, Pt I, p 837

² For such rate of interest see Fort St George Gazette 1893 Pt II, p 1082.

(Chapter XI—Warehousing.)

(c) to discharge all penalties incurred for violation of the provisions of this Act in respect of such goods

Form of
bond

Every such bond shall be in the form marked A hereto annexed or, when such form is inapplicable or insufficient, in such other form as is from time to time prescribed by the Chief Customs authority, and shall relate to the cargo or portion of the cargo of one vessel only.

Forwarding
of goods to
warehouse

93 When the provisions of sections 91 and 92 have been complied with in respect of any goods, such goods shall be forwarded in charge of an officer of Customs to the warehouse in which they are to be deposited.

A pass shall be sent with the goods specifying the name of the importing vessel and of the bonder, the marks, numbers and contents of each package, and the warehouse or place in the warehouse wherein they are to be deposited

Receipt of
goods at
warehouse

94 On receipt of the goods, the pass shall be examined by the warehouse keeper, and shall be returned to the Customs collector

No package, butt, cask or hogshead shall be admitted into any warehouse unless it bear the marks and numbers specified in, and otherwise correspond with, the pass for its admission

If the goods be found to correspond with the pass, the warehouse-keeper shall certify to that effect on the pass, and the warehousing of such goods shall be deemed to have been completed

If the goods do not so correspond, the fact shall be reported by the warehouse keeper for the orders of the Customs collector and the goods shall either be returned to the custom house in charge of an officer of Customs, or kept in deposit pending such orders as the warehouse-keeper deems most convenient

If the quantity or value of any goods has been erroneously stated in the bill of entry, the error may be rectified at any time before the warehousing of the goods is completed, and not subsequently

Goods how
warehoused

95 Except as provided in section 100, all goods shall be warehoused in the packages, butts, casks or hogsheads in which they have been imported

Warrant to
be given
when goods
are ware-
housed

96 Whenever any goods are lodged in a public warehouse or a licensed private warehouse, the warehouse keeper, or, in the case of the Bengal Bonded Warehouse Association, the Secretary of the said Association, shall deliver a warrant signed by him as such to the person lodging the goods

(Chapter XI.—Warehousing.)

Such warrant shall be in the form B hereto annexed, and shall be transferable by endorsement; and the endorsee shall be entitled to receive the goods specified in such warrant on the same terms as those on which the person who originally lodged the goods would have been entitled to receive the same.

Form of
warrant

The ¹[Chief Customs authority] may, by notification in the ²* Official Gazette, exempt salt and salted fish from the operation of this section, and may in like manner cancel such exemption

Rules relating to Goods in a Warehouse

97. The Customs-collector, or any officer deputed by him for the purpose, shall have access to any private warehouse licensed under this Act.

Access of
Customs-
officer to pri-
vate ware-
house

98 The Customs-collector may at any time by order in writing direct that any goods or packages lodged in any warehouse shall be opened, weighed or otherwise examined, and, after any goods have been so opened or examined, may cause the same to be sealed or marked in such manner as he thinks fit

Power to
cause pack-
ages lodged
in warehouse
to be opened
and exam-
ined

When any goods have been so sealed and marked after examination, they shall not be again opened without the permission of the Customs-collector, and, when any such goods have been opened with such permission, the packages shall, if he thinks fit, be again sealed or marked as before

399 Any owner of goods lodged in a warehouse shall at any time within the hours of business, have access to his goods in presence of an officer of Customs, and an officer of Customs shall, upon application for the purpose being made in writing to the Customs-collector, be deputed to accompany such owner

Access of
owners to
warehoused
goods

When an officer of Customs is specially employed to accompany such owner, a sum sufficient to meet the expense thereby incurred shall, if the Customs collector so require, be paid by such owner to the Customs-collector, and such sum shall, if the Customs-collector so direct, be paid in advance.

¹ Subs by the Decentralization Act, 1914 (4 of 1914), s 2 and Sch. Pt I, for "L G"

² The word "local" rep by s 4 and Sch of the Central Board of Revenue Act, 1924 (4 of 1924)

* For scale of fees to be levied on oil delivered from the Budge Budge warehouse, see Ben R and O

(Chapter VI — Warehousing)

Owner's
power to
deal with
warehoused
goods

100 With the sanction of the Customs collector and after such notice given and under such rules¹ and conditions as the Chief Customs authority from time to time prescribes any owner of goods may either before or after warehousing the same —

- (a) sort separate pick and repack the goods and make such alterations therein as may be necessary for the preservation sale shipment or disposal thereof (such goods to be repacked in the packages in which they were imported or in such other packages as the Customs collector permits)
- (b) fill up any casks of wine spirit or beer from any casks of the same secured in the same warehouse
- (c) mix any wines or spirit of the same sort secured in the same warehouse erasing from the cask all import brands unless the whole of the wine or spirit so mixed be of the same brand
- (d) bottle off wine or spirit from any casks
- (e) take such samples of goods as may be allowed by the Customs collector with or without entry for home consumption and with or without payment of duty except such as may eventually become payable on a deficiency of the original quantity

After any such goods have been so separated and repacked in proper or approved packages the Customs collector may at the request of the owner of such goods cause or permit any refuse damaged or surplus goods remaining after such separation or repacking (or at the like request any goods which may not be worth the duty) to be destroyed and may remit the duty payable thereon

Payment of
rent and
warehouse
dues

101 If goods be lodged in a public warehouse the owner shall pay monthly on receiving a bill or written demand for the same from the Customs collector or other officer deputed by him in that behalf rent and warehouse dues at such rates as the ²[Chief Customs officer] may fix³

A table of the rates of rent and warehouse dues so fixed shall be placed in a conspicuous part of such warehouse

If any bill for rent or warehouse dues presented under this section is not discharged within ten days from the date of presentation the

¹ For such rules see different local rules and orders

Subs. by the Decentralisation Act 914 (4 of 1914) s. 2 and Sch. Pt. I for Chief Customs authority

³ For fixing rent in certain places in Karachi see S. and O. for bonding salt at Kidderpore and Salt a public salt golah see Calcutta Gazette 1909 Pt. I p. 942

(Chapter XI — Warehousing)

Customs collector may, in the discharge of such demand (any transfer or assignment of the goods notwithstanding) cause to be sold by public auction, after due notice in the ¹[Official Gazette] such sufficient portion of the goods as he may select

Out of the proceeds of such sale, the Customs collector shall first satisfy the demand for the discharge of which the sale was ordered and shall then pay over the surplus (if any) to the owner of the goods

Provided that the application for such surplus be made within one year from the date of the sale of the goods or that sufficient cause be shown for not making it within such period

102 No warehoused goods shall be taken out of any warehouse, except on clearance for home consumption or shipment, or for removal to another warehouse or as otherwise provided by this Act

Goods not to be taken out of warehouse except as provided by this Act
Period for which goods may remain warehoused under bond

103 Any goods warehoused may be left in the warehouse, in which they are deposited, or in any warehouse to which they may in manner hereinafter provided be removed till the expiry of three years after the date of the bond executed in relation to such goods under section 92 The owner of any goods remaining in a warehouse on the expiry of such period shall clear the same for home consumption or shipment in manner hereinafter provided

Provided that when the license for any private warehouse is cancelled and the Customs collector gives notice of such cancelment to the owner of any goods deposited in such warehouse such owner shall in manner hereinafter provided and within seven days from the date on which such notice is given, remove such goods to another warehouse or clear them for home consumption or shipment

Goods in private warehouse on cancellation of license

Of the Removal of Goods from one Warehouse to another

104 Any owner of goods warehoused under this Act may, at any time within three years from the date of the bond executed in respect of such goods under section 92 and with the permission of the Chief Customs officer and on such conditions and after giving such security (if any) as such officer directs remove goods from one warehouse to another warehouse in the same port

Power to remove goods from one warehouse to another in same port

When any owner desires so to remove any goods he shall apply for permission to do so in such form as the ²[Chief Customs officer] from time to time prescribes

¹ Subs by the A O for local official Gazette

² Subs by the Decentralization Act 1914 (4 of 1914) s 2 and Sch, Pt I for Chief Customs authority

(Chapter XI—Warehousing.)

Power
to remove
goods from
one port
to another

1105 Any owner of goods warehoused at any warehousing port may, from time to time, within the said period of three years, remove the same by sea or by inland carriage, in order to be re warehoused at any other warehousing port.

Procedure

When any owner desires so to remove any goods for such purpose, he shall apply to the Chief Customs officer, stating the particulars of the goods to be removed, and the name of the port to which it is intended that they shall be removed, together with such other particulars, and in such manner and form, as the ²[Chief Customs-officer] from time to time prescribes

Transmis-
sion of
account of
goods to
officers at
port of
destination
Bond for
due arrival
and re
warehousing

3106 When permission is granted for the removal of any goods from one warehousing port to another under section 105 an account containing the particulars thereof shall be transmitted by the proper officer of the port of removal to the proper officer of the port of destination,

and the person requiring the removal shall before such removal enter into a bond, with one sufficient surety, in a sum equal at least to the duty chargeable on such goods, for the due arrival and re warehousing thereof at the port of destination within such time, as the ²[Chief Customs officer] directs

Such bond may be taken by the proper officer either at the port of removal or at the port of destination as best suits the convenience of the owner

If such bond is taken at the port of destination, a certificate thereof, signed by the proper officer of such port, shall, at the time of the removal of such goods, be produced to the proper officer at the port of removal, and such bond shall not be discharged unless such goods are produced to the proper officer, and duly re warehoused at the port of destination within the time allowed for such removal, or are otherwise accounted for to the satisfaction of such officer, nor until the full duty due upon any deficiency of such goods not so accounted for, has been paid

Remover
may enter
into a gen-
eral bond

1107 The ²[Chief Customs-officer] may permit any person desirous of removing warehoused goods to enter into a general bond, with such sureties, in such amount, and under such conditions, as the ²[Chief Customs-officer] approves for the removal, from time to time, of any

¹ For rules under this section, read with ss 9 and 130 as to the removal of non duty paid salt in Bengal see Ben R and O

² Subs by the Decentralization Act 1914 (4 of 1914) s 2 and Sch Pt. I for Chief Customs-authority

³ For the form of bond prescribed under this section for Madras, see Fort St. George Gazette, 1833 Pt. I p 838

(Chapter VI — Warehousing)

goods from one warehouse to another either in the same or in a different port and for the due arrival and re warehousing of such goods at the port of destination within such time as such [officer] directs

108 Upon the arrival of warehoused goods at the port of destination they shall be entered and warehoused in like manner as goods are entered and warehoused on the first importation thereof and under the laws and rules in so far as such laws and rules are applicable which regulate the entry and warehousing of such last mentioned goods

Goods on arrival at port of destination to be subject to same laws as goods on first importation
Bond under section 92 to continue in force notwithstanding removal

109 Every bond executed under section 92 in respect of any goods shall unless the Chief Officer of Customs in any case deems a fresh bond to be necessary continue in force notwithstanding the subsequent removal of such goods to another warehouse or warehousing port

Clearance for Home Consumption or Shipment

2110 Any owner of goods warehoused may at any time within three years from the date of the bond executed under section 92 in respect of such goods clear such goods for home consumption by paying (a) the duty assessed on such goods under section 87 or where the duty on such goods is altered under the provisions hereinafter contained such altered duty and (b) all rent penalties interest and other charges payable to the Customs collector in respect of such goods

Clearance of bonded goods for home consumption

111 Any owner of goods warehoused may at any time within three years from the date of the bond executed under section 92 in respect of such goods clear such goods for shipment to a foreign port on payment of all rent penalties interest and other charges payable as aforesaid and without payment of import duty on the same

Clearance of same for shipment to foreign port

Provided that the [Central Government] may prohibit the shipment for exportation to any specified foreign port of warehoused goods in respect of which payment of drawback or transshipment has been prohibited under section 49 or 134 respectively

112 Provisions and stores warehoused at the time of importation may within the said period of three years be shipped without payment of duty for use on board of any vessel proceeding to a foreign port

Clearance of same for shipment as provisions etc on vessel proceeding to foreign ports

1 Subs by the Decentralization Act 1914 (4 of 1914) s 2 and Sch Pt I, for authority
2 For scale of fees to be levied on oil delivered from the Budge Budge warehouse, see Ben R and O
3 Subs by the A O for G G in C

(Chapter XI—Warehousing)

Form of application for clearance of goods

113 Application to clear goods from any warehouse for home consumption or for shipment shall be made in such form as the ¹[Chief Customs officer] from time to time prescribes ²

Application when to be made

Such application shall ordinarily be made to the Customs collector at least twenty-four hours before it is intended so to clear such goods.

Re assessment of warehoused goods when damaged

114 If any goods upon which duties are leviable *ad valorem* or on a tariff valuation receive damage through unavoidable accident after they have been entered for warehousing and assessed under section 87, and before they are cleared for home consumption, they shall, if the owner so desires, be re-assessed for duty according to their actual value, and a new bond for the same may, at the option, of the owner, be executed for the unexpired term of warehousing

Re assessment on alteration of duty or tariff valuation

115 If, after any goods entered for warehousing have been assessed under section 87, any alteration is made in the duty leviable upon such goods or in the tariff valuation (if any) applicable thereto, such goods shall be re assessed in accordance with ³[such alteration]

Allowance in case of wine, spirit, beer or salt

116 If it appear at the time of clearing any wine, spirit, beer or salt from any warehouse for home consumption that there exists a deficiency not otherwise accounted for to the satisfaction of the Customs-collector, an allowance on account of ullage and wastage shall be made in adjusting the duties thereon, as follows (namely) —

(a) upon wine, spirit⁴ and beer in cask to an extent not exceeding the rates specified below, or such other rates as may, from time to time, be prescribed in this behalf by the ⁵[Chief Customs authority] and notified in the Official Gazette

For any time not exceeding	6 months,	2½ per cent
exceeding 6 months and not exceeding	12 „	5 „
„ 12 „	18 „	7½ „
„ 18 „	2 years	10 „
„ 2 years	3 „	12 „

¹ Subs by the Decentralization Act, 1914 (4 of 1914), s 2 and Sch Pt I, for "Chief Customs authority"

² For bill of entry form bond prescribed for Madras, see Fort St George Gazette, 1883, Pt I, p 839

³ Subs by the Sea Customs Act (1878) Amendment Act, 1889 (8 of 1889), s 2 for "the second proviso to s 37"

⁴ As to spirit wastage allowed in Madras see Fort St George Gazette, 1887, Pt I, p 766

⁵ Subs by the Decentralization Act 1914 (4 of 1914) s 2 and Sch Pt I, for "L G"

(Chapter VI — Warehousing)

(b) in the case of salt warehoused in a public warehouse, only the amount actually cleared shall be charged with customs duties

(c) in the case of salt warehoused in a private warehouse, wastage shall be allowed at such rate as may be prescribed from time to time by the ²[Chief Customs authority] and notified in the ³ Official Gazette

117 When any wine, spirit, beer or salt lodged in a warehouse is found to be deficient at the time of the delivery therefrom and such deficiency is proved to be due solely to ullage or wastage, the ⁴[Chief Customs officer] may direct in respect of any such article that allowance be made in any special case for a rate of ullage or wastage exceeding that contemplated in section 116

Further special allowance

Of the Forfeiture and Discharge of the Bond

118 If any warehoused goods are removed from the warehouse in contravention of section 102 or

if any such goods have not been removed from the warehouse at the expiration of the time during which such goods are permitted by section 103 to remain in such warehouse or

if any goods in respect of which a bond has been executed under section 92 and which have not been cleared for home consumption or shipment or removed under this Act are lost or destroyed otherwise than as provided in section 100 or as mentioned in section 122 or are not accounted for to the satisfaction of the Customs collector or

If goods are improperly removed from warehouses or allowed to remain beyond time fixed or lost or destroyed or taken as samples Collector may demand duty etc

if any such goods have been taken under section 100 as samples with out payment of duty

the Customs collector may thereupon demand and the owner of such goods shall forthwith pay the full amount of duty chargeable on account of such goods together with all rent penalties interest and other charges payable to the Customs collector on account of the same

119 If any owner fails to pay any sum so demanded the Customs collector may forthwith either proceed upon the bond executed under section 92 or cause such portion as he thinks fit of the goods (if any) in the warehouse on account of which the amount is due to be detained with a view to the recovery of the demand

Procedure on failure to pay duty etc

¹ As to salt wastage allowed in Madras see Mad R and O

² Sub s by the Decentralization Act 1914 (4 of 1914) s 2 and Sch Pt I for L G

³ The word local rep by s 4 and Sch of the Central Board of Revenue Act 1974 (4 of 1974)

⁴ S 1 by the Decentralization Act 1914 (4 of 1914) s 2 and Sch Pt I for Chief Customs authority

(Chapter XI — Warehousing)

and if the demand be not discharged within ten days from the date of such detention (due notice thereof being given to the owner), the goods so detained may be sold by public auction duly advertised in the ¹[Official Gazette]

The net proceeds of any sale so made of goods so detained shall be written off upon the bond in discharge thereof to the amount received, and if any surplus be obtained from such sale, beyond the amount of the demand, such surplus shall be paid to the owner of the goods. Provided that application for the same be made within one year from the sale or that sufficient cause be shown for not making the application within such period.

No transfer or assignment of the goods shall prevent the Customs-collector from proceeding against such goods in the manner above provided for any amount due thereon.

Noting removal of goods

120 When any warehoused goods are taken out of any warehouse the Customs collector shall cause the fact to be noted on the back of the bond.

Every note so made shall specify the quantity and description of such goods the purposes for which they have been removed the date of removal, the name of the person removing them, the number and date of the shipping bill under which they have been taken away if removed for exportation by sea or of the bill of entry if removed for home-consumption and the amount of duty paid (if any).

Register of bonds

121 A register shall be kept of all bonds entered into for customs duties on warehoused goods and entry shall be made in such register of all particulars required by section 120 to be specified.

Cancellation and return of bonds

When such register shows that the whole of the goods covered by any bond have been cleared for home consumption or shipment or otherwise duly accounted for and when all amounts due on account of such goods have been paid the Customs collector shall cancel such bond as discharged in full and shall on demand deliver it so cancelled to the person who has executed or who is entitled to receive it.

Miscellaneous

Power to remit duties on warehoused goods lost or destroyed

122 If any goods in respect of which a bond has been executed under section 92 and which have not been cleared for home consumption are

¹ Subs by the A O for local official Gazette

(Chapter XI — Warehousing)

lost or destroyed by unavoidable accident or delay, the ¹[Chief Customs-officer] may in ²[his] discretion remit the duties due thereon

Provided that if any such goods be so lost or destroyed in a private warehouse notice thereof be given to the Customs collector within forty-eight hours after the discovery of such loss or destruction

123 The warehouse keeper in respect of goods lodged in a public warehouse and the licensee in respect of goods lodged in a private warehouse shall be responsible for their due reception therein and delivery therefrom and for their safe custody while deposited therein, according to the quantity weight or gauge reported by the Customs house officer who has assessed such goods allowance being made if necessary, for ullage and wastage as provided in sections 116 and 117

Responsibility of warehouse keeper

Provided that no owner of goods shall be entitled to claim from the Customs collector, or from any keeper of a public warehouse compensation for any loss or damage occurring to such goods while they are being passed into or out of such warehouse or while they remain therein, unless it be proved that such loss or damage was occasioned by the wilful act or neglect of the warehouse keeper or of an officer of Customs

Compensation for loss or injury

124 Every public warehouse shall be under the lock and key of a warehouse keeper appointed by the Chief Officer of Customs

Public warehouse to be locked

125 The ³[Chief Customs officer] may from time to time determine in what division of any public warehouse and in what manner, and on what terms any goods may be deposited and what sort of goods may be deposited in any such warehouse

Power to decide where goods may be deposited in public warehouse and on what terms

126 The expenses of carriage packing and stowage of goods on their reception into or removal from a public warehouse shall if paid by the Customs collector or by the warehouse keeper be chargeable on the goods and be defrayed by and recoverable from the owner in the manner provided in section 119

Expenses of carriage packing etc to be borne by owners

127 All the provisions of this Act relating to private warehouses shall be applicable to the warehouses wherein the Bengal Bonded Warehouse Association receives bonded goods

Bengal Bonded Warehouse Association

¹ Subs by the Decentralization Act 1914 (4 of 1914) s 2 and Sch Pt I for Chief Customs authority

² Subs by s 2 and Sch Pt I *ibid* for its

³ Subs by s 2 and Sch Pt I *ibid* for Chief Customs authority or such officer of Customs as such authority from time to time appoints in this behalf

(Chapter XII —Transhipment)

CHAPTER XII

TRANSHIPMENT

Power to
permit
transship-
ment
without
payment of
duty

128 In the ports of Calcutta, Madras, Bombay, Karwar, Karachi
1* * * * Chittagong and such other ports as the ²[Chief
Customs authority] may from time to time, by notification in the
3[4* Official Gazette] direct⁵ in this behalf, the Customs collector may,
on application by the owner of any goods imported into such port, and
specially and distinctly manifested at the time of importation as for
transhipment to some other customs or foreign port, grant leave to
tranship the same without payment of the duty (if any) leviable at the
port of transhipment, and without any security or bond for the due
arrival and entry of the goods at the port of destination

In any customs port other than a port in which the preceding clause
may for the time being be in force, the Customs collector may, on appli-
cation by the owner of any goods so imported and manifested, grant
leave for transhipment without payment of the duty (if any) leviable at
such port. Provided that, where the goods so transhipped are dutiable,
and are to be removed to some other customs port, the applicant shall
enter into a bond ⁶ with such security as may be required of him, in a
sum equal at least to the duty chargeable on such goods for the due
arrival and entry thereof at the port of destination within such time as
such Customs collector directs

Superintend-
ence of trans-
shipment

129 An officer of Customs shall in every case, be deputed free of
charge to superintend the removal of transhipped goods from vessel to
vessel

Subsidiary
rules as to
transhipment

130 The powers conferred on the Customs collector by section 123
shall be exercised, and the transhipment shall be performed, subject
to such ⁷rules as may from time to time be made by the ⁸[Chief Customs
authority].

No rules made under this section shall come into force until after
the expiry of such reasonable time from the date of the publication

¹ The names Aden, Langoon, Moulman Akayab rep by the A O

² Subs by the Central Board of Revenue Act 1924 (4 of 1924) s 4 and Sch for
'L. G.'

³ Subs by the Decentralization Act 1914 (4 of 1914) s 2 and Sch Pt I for
'Gazette of India'

⁴ The word 'local' rep by s 4 and Sch of Act 4 of 1924

⁵ For notification adding Negapatnam to the above list of ports see Gazette of
India 1901, p 31

⁶ For form of such bond see Fort St George Gazette 1833 Pt I p 839

⁷ For rules for the transhipment of goods in port see different local Rules and
Orders

⁸ Subs by the Decentralization Act, 1914 (4 of 1914) s 2 and Sch Pt I for
'L. G.'.

(Chapter XII—Transshipment)

of the same as the ¹[Chief Customs authority] may in each case appoint in this behalf

131 All goods transhipped under the second clause of section 128 for removal to a customs port shall on their arrival at such port be entered in like manner as goods are entered on the first importation thereof and under the laws and rules in so far as such laws and rules can be made applicable which regulate the entry of such last mentioned goods

Entry and warehousing on arrival of goods transhipped under section 128, clause 2.

132 If two or more vessels belonging wholly or in part to the same owner be at any customs port at the same time any provisions and stores in use or ordinarily shipped for use on board may at the discretion of the Customs collector be transhipped from one such vessel to any other such vessel without payment of import duty

Transshipment of provisions and stores from one vessel to another of same owner without payment of duty

133 ²A transhipment fee on any goods or class of goods transhipped under this Act may be levied at such rates on each bale or package or according to weight measurement quantity or number and under such rules as ³[the Chief Customs authority] may from time to time by notification in the ⁴Official Gazette prescribe for each port

Levy of transhipment fee

134 The ⁵[Central Government] may from time to time by notification in the ⁶[Official Gazette] prohibit at any specified port or at all ports the transshipment of any specified class of goods generally or when destined for any specified ports or prescribe any special mode of transshipping any specified class of goods

Power to prohibit transshipment

135 Except as provided in this Act no goods shall be transhipped at any port or place in British India

No goods to be transhipped except as provided

¹ Subs by the Decentralization Act 1914 (4 of 1914) s 2 and Sch Pt I for L G

² For transshipment fee leviable at (1) Bengal Ports see Ben R and O (2) Bombay ports and Karachi on certain goods see Bom R and O and (3) Madras see Fort St George Gazette 1899 Pt I p 933 *ibid* 1901 Pt I p 137

³ Subs by s 4 and Sch of the Central Board of Revenue Act 1924 (4 of 1924) for the L G subject to the control of the G G in C

⁴ The word local rep by s 4 and Sch *ibid*

⁵ Subs by the A O for G G in C

⁶ Subs by the A O for Gazette of India

(Chapter XIII — Exportation or Shipment and Re landing)

CHAPTER XIII

EXPORTATION OR SHIPMENT AND RE LANDING

No goods to
be shipped
etc till
entry out
wards of
vessel

136 Except with the written permission of the Customs collector no goods other than passengers baggage or ballast urgently required for a vessel's safety shall be shipped or water borne to be shipped in any vessel in a customs port until an order has been obtained under section 61 for entry outwards of such vessel

When such order has been obtained the export cargo of such vessel may be shipped subject to the provisions next hereinafter contained

Clearance
for ship-
ment

137 1* * * * No goods except passengers baggage shall be shipped or water borne to be shipped for exportation until—

(a) the owner has delivered to the Customs collector or other proper officer² a shipping bill of such goods in duplicate in such form and containing such particulars in addition to those specified in section 29 as may from time to time be prescribed by the³ [Chief Customs officer]

(b) such owner has paid the duties (if any) payable on such goods and

(c) such bill has been passed by the Customs collector

4[Provided that the Chief Customs officer may in the case of any customs port or wharf by notification in the⁵ [Official Gazette] and subject to such restrictions and conditions if any as he thinks fit exempt goods or any specified goods or class of goods or any specified person or class of persons from all or any of the provisions of this section]

Bond re-
quired in
certain cases
before ex-
portation

6138 Before any warehoused goods or goods subject to excise duties or goods entitled to drawback of customs duties on exportation or goods exportable only under particular rules or restrictions are

¹ The words "Unless the Chief Customs officer shall in the case of any customs port or wharf or of any class of goods otherwise directed by notification in the local official Gazette" were rep. by s 5 (1) of the Sea Customs (Amendment) Act 1914 (12 of 1914)

² As to rules in force in the Port of Bombay and in Sind in regard to shipment on incomplete bills see Bom R and O and Sn R & O

For forms of shipping bills prescribed for free and dutiable goods in Madras see Port St George Gazette 1833 Pt I p 840 in Bombay see Bombay Government Gazette 1912 Pt I p 1350

³ Subs. by the Decentralization Act 1914 (4 of 1914) s 2 and Sch Pt I for Chief Customs authority

⁴ Ins. by the Sea Customs (Amendment) Act 1914 (12 of 1914) s 5 (2)

⁵ Subs. by the A O for local official Gazette

⁶ For rules for the export of salt to British Indian ports see Mad R and O

(Chapter XIII.—Exportation or Shipment and Re-landing.)

permitted to be exported, the owner shall, if required so to do, give security by bond in such sum, not exceeding twice the duty leviable on such goods, as the Customs-Collector directs, with one sufficient surety, that such goods shall be duly shipped, exported and landed at the place for which they are entered outwards, or shall be otherwise accounted for to the satisfaction of such officer

139. When goods are cleared for shipment on a shipping bill presented after port-clearance has been granted, the Customs collector may, if he thinks fit, levy, in addition to any duty to which such goods are ordinarily liable, a charge not exceeding—

Additional charge on goods cleared for shipment after port clearance granted

(a) in the case of goods liable to duties on fixed tariff-valuations, one per cent on the tariff-value;

(b) in the case of all other goods, one per cent on the market-value

Nothing in this section shall apply to any shipment of treasure or opium

140. If any goods mentioned in a shipping bill or manifest be not shipped, or be shipped and afterwards re-landed, the owner shall, before the expiration of five clear working days after the vessel on which such goods were intended to be shipped, or from which they were re-landed, has left the port, give information of such short-shipment or re-landing to the Customs collector

Notice of non shipment or re-landing, and return of duty thereon

Upon an application being made to the Customs collector, any duty levied upon goods not shipped, or upon goods shipped and afterwards re-landed, shall be refunded to the person on whose behalf such duty was paid. Provided that no such refund shall be allowed unless information has been given as above required

141. If, after having cleared from any customs port, any vessel, without having discharged her cargo, returns to such port or puts into any other customs port, any owner of goods in such vessel if he desires to land or tranship the same or any portion thereof for re-export, may, with the consent of the master, apply to the Customs collector in that behalf

Goods re-landed or transhipped from a vessel returning to port, or putting into an other port

The Customs-collector, if he grant the application, shall thereupon send an officer of Customs to watch the vessel and to take charge of such goods during such re-landing or transshipment

Such goods shall not be allowed to be transhipped or re-exported free of duty by reason of the previous settlement of duty at the time of first export, unless they are lodged and remain, until the time of re-export, under the custody of an officer of Customs, in a place

177

(Chapter XIII — *Exportation or Shipment and Re landing* Chapter
XIV — *Spirit*)

appointed by the Customs collector or are transhipped under such custody

All expenses attending such custody shall be borne by the owner

Vessel returning to port may enter and land goods under import rules

142 In either of the cases mentioned in section 141 the master of the vessel may enter such vessel inwards and any owner of goods therein may, with the consent of the master land the same under the rules herein contained for the importation of goods

In every such case any export duty levied shall be refunded to and any amount paid in drawback shall be recovered from such owner

Landing of cargo during repairs

143 The Customs collector may on application by the master of any vessel which is obliged before completing her voyage to put into any customs port for repairs permit him to land the cargo or any portion thereof and to place it in the custody of an officer of Customs during such repairs and to re ship and export the same free of duty

All expenses attending such custody shall be borne by the master

CHAPTER XIV

SPIRIT

Exportation of Spirit under Bond for Excise duty

Rules for removal of spirit from distillery without payment of duty for exportation

144 The Chief Customs authority may from time to time make rules¹ prescribing the conditions on which spirit manufactured in British India may be removed from any licensed distillery for exportation without payment of excise duty

The person so removing any such spirit shall execute a bond with one or more sureties in the form marked C hereto annexed or (when such form is inapplicable or insufficient) in such other form as the said Authority from time to time prescribes conditioned that such duty shall be paid on all such spirit as is—

(a) not exported within four months from the date of the bond or

(b) exported to a customs port unless ²[either] the payment of excise duty as provided by this Chapter in respect thereof at the port of destination ²[or the delivery of the

¹ For such rules see Ben P and O Mad R. & O

² Ins by the Sea Customs Act (1878) Amendment Act 1887 (2 of 1887) s 1 (1)

(Chapter XIV—Spirit)

spirit into a warehouse appointed in this behalf by the ¹[Chief Customs authority] having authority at that port] is within six months from the date of the bond proved to the satisfaction of the proper officer

The Chief Officer of Customs of the port of exportation may, on sufficient cause shown, extend for a further term not exceeding four months the period allowed for the exportation of any such spirit, or for the production of such proof that duty has been ²[so paid or the spirit so delivered]

145 Spirit intended for exportation under bond for the excise duty shall ³[except when provision is made by any enactment for the time being in force for its being intermediately deposited in a licensed ware house] be taken from the distillery direct to the custom house, under passes to be granted for that purpose by the officers of Excise

Spirit for export to be taken direct from distillery to Custom house under pass

146 Spirit brought to the custom house for exportation under bond for the excise duty ⁴[may] previous to shipment be gauged and proved by an officer of Customs and the quantity of spirit for which credit is to be given in the settlement of any bond ⁴[may] be determined in the same manner

Gauging and proving of spirit

147 Excise duty shall be recoverable previous to shipment upon the excess (if any) of the quantity of spirit passed from a distillery over the quantity ascertained by gauge and proof at the custom house, less an allowance for ullage and wastage at such rates as are from time to time prescribed by the ¹[Chief Customs authority] and notified in the ⁵* Official Gazette

Duty to be recovered on any deficiency in spirit under bond

⁶ 148 ⁶[Notwithstanding anything in the ⁷Indian Tariff Act 1882] spirit exported under bond for excise duty from any customs port to any other customs port shall be charged at the port of importation with excise duty at the ordinary rate to which the spirit of the like kind and strength is liable at such port

Duty on spirit exported under bond from one Indian port to another

⁸[Provided that the ¹[Chief Customs authority] may authorize the import of such spirit without the payment of that duty at the port of

¹ Subs by the Decentralization Act 1914 (4 of 1914) s 2 and Sch Pt I for L G

² Subs by the Sea Customs Act (1878) Amendment Act 1887 (2 of 1887) s 1 (?) for paid

³ Inserted by the Excise and Sea Customs Law Amendment Act 1885 (9 of 1885)

⁴ Subs by Act 2 of 1887 s 2 for shall

⁵ The word local rep by the Central Board of Revenue Act 1924 (4 of 1924), s 4 and Sch

⁶ Inserted by Act 2 of 1887 s 3 (1)

⁷ See now the Indian Tariff Act 1934 (32 of 1934).

⁸ Inserted by Act 2 of 1887, s 3 (2)

(Chapter XIV.—Spirit)

importation when the spirit is to be delivered into a warehouse appointed by the ¹[Chief Customs authority] in this behalf, and the excise duty thereon is to be paid on the removal of the spirit from a warehouse so appointed]

Removal for local consumption of spirit intended for exportation

149. Spirit brought to the custom-house ²[or to a warehouse licensed under any enactment for the time being in force] for exportation under bond for the excise duty may, on payment of such duty, be removed for local consumption under passes to be granted for that purpose by the officers of Excise

Credit for every such payment shall be given in discharge of the bond to which it relates

Drawback of Excise duty on Export of Spirit

Drawback of excise duty on spirit exported

3150 A drawback of excise duty paid on spirit manufactured in British India and exported to any foreign port under the provisions of section 138 shall be allowed by the Customs-collector at the port of exportation:

Provided that the exportation be made within one year from the date of payment of such excise duty, and that the spirit, when brought to the custom house, be accompanied by a pass in which such payment is certified

Such drawback shall be regulated by the strength and quantity of such spirit as ascertained by gauge and proof by an officer of Customs

Miscellaneous

Differential duty to be levied in certain cases

151 ⁴[Notwithstanding anything in the ⁵Indian Tariff Act, 1882,] if spirit manufactured in British India upon which excise duty has been paid is exported from one customs port to another, and the rate of local excise duty at the port of importation is higher than that already paid upon such spirit, a differential duty shall be charged thereon, at such rate ⁶[(not exceeding the difference between the two rates)] as the ⁷[Provincial Government] at such port may by notification in the ⁸[Official Gazette], from time to time prescribe

¹ Subs by the Decentralization Act 1914 (4 of 1914) s 2 and Sch Pt I, for 'L G'

² Ins by s 5 (2) of the Excise and Sea Customs Law Amendment Act 1885 (9 of 1885)

³ As to the application of the provisions of s 150 to malt liquor, see s 9 of the Excise (Malt Liquors) Act, 1890 (13 of 1890)

⁴ Ins by the Sea Customs Act (1878) Amendment Act, 1887 (2 of 1887), s 4 (1)

⁵ See now the Indian Tariff Act, 1934 (32 of 1934)

⁶ Ins by the A O C/ the G of I Act, 1935 (26 Geo 5, ch 2), 7th Sch, List II, entry 40

⁷ Subs by the A O for L G'

⁸ Subs by the A O for local official Gazette"

(Chapter XIV.—Spirit)

¹[Provided that the ²[Chief Customs-authority] may authorize the import of such spirit without the payment of the differential duty at the port of importation when the spirit is to be delivered into a warehouse appointed by the ²[Chief Customs-authority] in this behalf, and the differential duty is to be paid on the removal of the spirit from a warehouse so appointed.]

152. Rum-shrub, cordial and other such liquor prepared in a licensed distillery under the supervision of the surveyor or officer in charge of the distillery shall be charged with excise duty under this Act according to the quantity of spirit used in its preparation as ascertained by such surveyor or officer.

Rum shrub,
etc., how
charged
with duty

The provisions of this Act respecting spirit, except such as relate to gauge and proof, shall apply to such liquor

Provisions
respecting
spirit appli-
ed to such
liquors

153. No drawback shall be allowed for any spirit on which duty has been paid, nor shall the duty due on any spirit under bond be remitted, unless the spirit is shipped from the custom house, and in a vessel whereon an officer of Customs has been appointed to superintend the receipt of export-cargo

Conditions
of draw-
back and
remission of
duty on
spirit

154. No spirit shipped for exportation shall be re-landed without a special pass from an officer of Excise, in addition to any permission of an officer of Customs which may be required by the law for the time being in force.

Re-land
of spirit
shipped

155 ³[When by any law for the time being in force, a special duty is imposed on denatured spirit, ⁴[the Central Government] may

Power to
make rules
for ascer-
taining that
imported
spirit has
been ren-
dered unfit
for human
consump-
tion

make rules for ascertaining and determining what spirit imported into British India shall be deemed to be denatured spirit for the purposes of such law, and for causing such spirit to be denatured, if necessary, ⁵[by officers of Government] at the expense of the person importing the same, before the customs-duties leviable thereon are levied]

In the absence of any such rules, or if any dispute arises as to their applicability, the Chief Customs officer shall decide what spirit is subject only to the said special duty, and such decision shall be final

Decision
where no
rules, or
their
applicability
disputed

¹ Ins by the Sea Customs Act (1878) Amendment Act, 1887 (2 of 1887), s 4 (2)

² Subs by the Decentralization Act, 1914 (4 of 1914) s 2 and Sch, Pt I, for "L G"

³ Subs by s 6 of the Sea Customs (Amendment) Act, 1914 (12 of 1914), for the original paragraph

⁴ Subs by the A O for "the L G"

⁵ The words "with the previous sanction of the G G in C", ins by the Central Board of Revenue Act 1924 (4 of 1924), s 4 and Sch, were rep by the A O

⁶ Subs by s 4 and Sch of the Central Board of Revenue Act, 1924 (4 of 1924) for "by its own officers"

(Chapter XV—Coasting-trade)

CHAPTER XV.

COASTING TRADE

Chapters
VII, IX, X
and part of
XIII inap-
plicable
to coasting
trade
Power to
regulate
coasting
trade

156. Except as hereinafter provided, nothing in Chapters VII, IX, X and sections 136, 139 and 141 to 143 inclusive, of this Act, shall apply to coasting-vessels or to goods imported or exported in such vessels

157. ¹[The Central Government] may, from time to time, make rules consistent with the provisions of this Chapter—

(a) extending² any provision of the Chapters and sections mentioned in section 156, with or without modification, to any coasting vessels or to any goods imported or exported in such vessels,

(b) exempting any such vessels or goods from any of the other provisions of this Act except those contained in this Chapter;

³(c) prescribing the conditions on which goods, or any specified class of goods, may be (1) carried in a coasting-vessel, whether shipped at a foreign port, or at a customs-port, or at a place declared under section 12 to be a port, (2) shipped in a coasting-vessel before all dutiable goods and goods brought in such vessel from a foreign port have been unladen,

(d) prohibiting the conveyance of any specified class of goods generally, or to or between specified ports in a coasting vessel

Coasting
vessels to
deliver mani-
fest and ob-
tain port
clearance
before leav-
ing port of
lading

4158. Before any coasting-vessel departs from the port of lading, or, when there are more ports of lading than one, the first port of lading, the master shall fill in, sign and deliver to the Customs collector a manifest in duplicate, containing a true specification of all goods to be carried in such vessel, in such form, and accompanied by such shipping bills or other documents, as may from time to time be prescribed by the Chief Customs authority.

¹ Subs by the A O for 'The G G in C' which had been subs for 'The L G' by s 4 and Sch of the Central Board of Revenue Act, 1924 (4 of 1924)

² For orders extending certain sections to coasting vessels see local rules and orders

³ For rules regulating the coasting trade generally or particularly in respect of a place or articles carried, see local rules and orders

⁴ For rule for obtaining port clearances by tondils of country coasting vessels, see Bombay Government Gazette, 1884, Pt I, p 491

(Chapter XI —Coasting trade)

If the Customs collector sees no objection to the departure of the vessel, he shall retain the duplicate and return the original manifest, dated and signed by him, together with its accompaniments and such manifest shall be the port clearance of the vessel unless under the general orders of the Chief Customs authority a separate port clearance be prescribed.

159 Within twenty four hours after the arrival of any coasting vessel at any customs port whether intermediate or final and before any goods are there discharged the manifest together with the other documents referred to in section 158 shall be delivered to the Customs collector who shall note on the manifest the date of delivery.

Delivery of manifest etc on arrival.

If the vessel has touched at any foreign port between such port of arrival and her last preceding customs port of departure the master shall append to the manifest a declaration to that effect and shall also indicate on the manifest the portions (if any) of the cargo therein described which have been discharged and subjoin thereto a true specification of all goods shipped at such port.

If the customs port of arrival be an intermediate port and a portion only of the cargo is to be discharged thereat the master shall likewise so deliver an extract from the manifest signed by him relating to such portion, and the Customs collector shall after verifying such extract return to him the original manifest and all documents accompanying it except those relating to such portion.

If in any case the cargo actually on board any coasting vessel on her arrival at any customs port does not owing to short shipment re-landing or other cause, correspond with the specification thereof in the manifest returned to the master under the second clause of section 158 such master shall before delivery of such manifest under this section note thereon the particulars of the difference.

The Customs collector when satisfied with the manifest and other documents shall grant an order to break bulk.

160 Before any coasting vessel departs from any customs port at which she has touched during her voyage the master shall re-deliver the original manifest to the Customs collector after indicating thereon the portions (if any) of the cargo therein described which have been discharged, and subjoining thereto a true specification of all goods shipped at such port. He shall also deliver a duplicate signed by him, of the specification so subjoined.

Departure from intermediate port

If the Customs collector sees no objection to the departure of the vessel he shall proceed as prescribed in the second clause of section 158.

(Chapter XV —Coasting-trade)

Power to
require bond
before port
clearance is
granted

161 The Customs collector may, for sufficient reason, refuse port-clearance to any coasting-vessel declared to be bound to, or about to touch at, any customs-port, unless the owner or master gives a bond, with such security as the Customs collector deems sufficient, for the production to the Customs collector of a certificate from the proper officer of the port to which such vessel is said to be bound, of her arrival at such port within a reasonable time to be prescribed in each case by the Customs-collector

Discharge
of cargo

162. When permission has been granted by the Customs collector for the discharge of cargo from any coasting-vessel—

(a) if the vessel has not touched at any intermediate foreign port in the course of her voyage, and has not on board any dutiable goods, the cargo may be forthwith landed and removed by the owner without entry thereof at the custom-house and clearance for home consumption, but subject to such general check and control as the ²[Chief Customs-officer] may from time to time by rules prescribe;

(b) if the vessel has so touched at any such port or has on board any such goods, such vessel shall be subject to all the provisions of Chapter VII of this Act relating to vessels arriving and such goods, and until such goods have been duly discharged all other goods on board shall be subject to the provisions of Chapter IX of this Act relating to goods imported

Goods on
coasting ves-
sel, if excise-
able, not to
be unladen
without per-
mission
Grant and
revocation
of general
pass

163. If any of the goods on board of any coasting vessel be subject to any excise-duty they shall not be unladen without the permission of the proper officer of Excise

164 Notwithstanding anything hereinbefore contained, ³[the Chief Customs officer may grant or] authorize the Customs collector to grant a general pass, on any conditions which ⁴[the Chief Customs officer] thinks expedient for the lading and clearance and for the entry and unlading, of any coasting steam vessel at any ports of despatch or destination, or at any intermediate ports at which she touches for the purpose of receiving goods or passengers

¹ For notification issued under this section see Fort St George Gazette, 1883 Pt I, p 842

² Subs by the Decentralization Act, 1914 (4 of 1914) s 2 and Sch, Pt I, for 'Chief Customs authority'

³ Subs by s 2 and Sch, Pt I, *ib id*, for 'the Chief Customs authority may'

⁴ Subs by s 2 and Sch, Pt I, *ib id*, for 'such authority'

(Chapter XV—Coasting trade)

Such pass shall be valid throughout British India, or for such ports only as may be specified therein

Any such general pass may be revoked by order of ¹[the Chief Customs-officer] by whom the grant thereof ²[was made or authorized] by notice in writing under the hand of ³[the Chief Customs officer] delivered to the master or to the owner of such steam vessel or to any of the crew on board

165 The Chief Customs authority may direct that the master of any coasting vessel which is square rigged or propelled by steam shall keep, or cause to be kept a cargo-book stating the name of the master the vessel, the port to which she belongs and the port to which on each voyage she is bound

Rules respecting cargo books to be kept by masters of coasting vessels

At every port of lading such master shall enter or cause to be entered in such book the name of such port and an account of all goods there taken on board of such vessel, with a description of the packages and the quantities and descriptions of the goods contained therein or stowed loose and the names of the respective shippers and consignees in so far as such particulars are known to him

At every port of discharge of any such goods such master shall enter or cause to be entered in such book the respective days on which such goods or any of them are delivered out of such vessel

The respective times of departure from every port of lading and of arrival at every port of discharge shall in like manner be duly entered

Every such master shall on demand produce his cargo book for the inspection of any officer of Customs and such officer shall be at liberty to make any note or remark therein

The Chief Customs authority may in the case of any vessel the master whereof has been directed to keep a cargo book under this section dispense with the manifest required under sections 158 159 and 160

166 Any duly empowered officer of Customs may go on board of any coasting vessel in any port or place in British India and may at any period of a voyage search any such vessel and examine all goods on board and all goods then lading or unlading and may demand the production of any document which ought to be on board of any such vessel

Power to board and examine coasting vessels

The Customs collector may further require that any such document belonging to any coasting vessel then in port shall be brought to him for inspection

¹ Subs by the D centralization Act 1914 (4 of 1914) s 2 and Sch Pt I for the Chief Customs authority

² Subs by s 2 and Sch Pt I *ibid* for 'was authorized'

³ Subs by s 2 and Sch Pt I *ibid* for such authority

(Chapter XVI—Offences and Penalties)

CHAPTER XVI

OFFENCES AND PENALTIES

Punishments
for offences

167. The offences mentioned in the first column of the following schedule shall be punishable to the extent mentioned in the third column of the same with reference to such offences respectively —

Offences	Section of this Act to which offence has reference	Penalties
1—Contravening any rule made under this Act	General	Penalty not exceeding five hundred rupees
2—If any goods be landed or shipped or if an attempt be made to land or ship any goods or if any goods be brought into any bay river creek or arm of the sea for the purpose of being landed or shipped at any port or place which at the date of such landing shipment attempt or bringing is not a port for the landing and shipment of goods	11	such goods shall be liable to confiscation
3—If any person ship or land goods or aid in the shipment or landing of goods or knowingly keep or conceal or knowingly permit or procure to be kept or concealed any goods shipped or landed or intended to be shipped or landed contrary to the provisions of this Act or	General	such person shall be liable to a penalty not exceeding one thousand rupees
if	11	
bay river creek or arm of the sea which is not a port for the shipment and landing of goods		
4—If any vessel which has been within the limits of any port in British India with cargo on board be afterwards found in any port bay river creek or arm of the sea in British India light or in ballast and if the master be unable to give a due account of the customs port where such vessel lawfully discharged her cargo	11	such vessel shall be liable to confiscation
5—If any goods are put without the authority of the proper officer of Customs on board of any tug steamer or pilot vessel from any seagoing vessel inwards in ballast or	11	such goods shall be liable to confiscation and the master of every such tug steamer or pilot vessel shall be liable to a penalty not exceeding one thousand rupees

1 Sub-ly the Amending Act 1891 (12 of 1891) s 2 (2), for 'No 2'

2 Subs by s 2 *ibid*, for 'landing or shipment'

(Chapter XVI.—Offences and Penalties.)

Offences	Section of this Act to which offence has reference	Penalties
<p>if any goods are put without such authority, out of any tug steamer or pilot vessel for the purpose of being put on board of any such vessel outward bound or</p> <p>if any goods on which drawback has been granted are put without such authority, on board of any tug steamer or pilot vessel for the purpose of being re-landed</p>	17	<p>the master of such vessel shall be liable to a penalty not exceeding one thousand rupees</p>
<p>6.—If any vessel arriving at, or departing from any customs port fails when so required under section 17 to bring to at any such station as has been appointed by the [Chief Customs officer] for the boarding or landing of an officer of Customs</p>	17	<p>the master of such vessel shall be liable to a penalty not exceeding five hundred rupees, and the vessel if not entered shall not be allowed to enter until the penalty is paid</p>
<p>7.—If any vessel arriving at any customs port after having come to its proper place of mooring or unloading removes from such place except with the authority of the Collector obtained in accordance with the provision of the Indian Ports Act 1875¹ or other lawful authority, to some other place of mooring or unloading or</p>	17	<p>the master of such vessel shall be liable to a penalty not exceeding five hundred rupees, and the vessel if not entered shall not be allowed to enter until the penalty is paid</p>
SUGG 14,		
<p>8.—If any goods the importation or exportation of which is for the time being prohibited or restricted by or under Chapter IV of this Act be imported into or exported from British India contrary to such prohibition or restriction or</p> <p>if any attempt be made so to import or export any such goods or</p> <p>if any such goods be found in any package produced to any officer of Customs</p>	18 & 19	<p>such goods shall be liable to confiscation</p> <p>any person concerned in any such offence shall be liable to a penalty not exceeding three times the value of the goods or not exceeding one thousand rupees</p>
<p>any manner on board of any vessel within the limits of any port in British India, or</p>		

¹ Subs. by the Decentralization Act, 1914 (4 of 1914) s 2 and Sch., Pt. I, for "Chief Customs authority"

² See now the Indian Ports Act 1908 (15 of 1908)

(Chapter XVI—Offences and Penalties)

Offences	Section of this Act to which of fence has reference	Penalties
<p>9—restriction,</p> <p>or attests any document relating to</p> <p>re landed at any customs port (not having been duly re landed or discharged under the provisions of this Act),</p> <p>11—If any wine spirit provisions or stores be not laden on board of the vessel on board of which they should, under the provisions of section 45 46 47 or 48 be laden or be unladen from such vessel without the permission of the proper officer of Customs,</p> <p>12.—If any goods be entered for drawback, which are of less value than the amount of the drawback claimed</p> <p>13.—If, in any river or port wherein a place has been fixed under section 53 by the ¹[Chief Customs-authority], any vessel arriving passes beyond such place, before delivery of a manifest to the pilot, officer of Customs, or other person duly authorized to receive the same,</p>	<p>General</p> <p>42 & 43</p> <p>44 to 48</p> <p>50</p> <p>53</p>	<p>such person shall be liable to a penalty not exceeding one thousand rupees</p> <p>such goods, together with any vessel used in so un shipping or re landing them, shall be liable to confiscation, and the master of the vessel from which such goods are so unshipped or re landed, and any person by whom or by whose orders or means such goods are so unshipped or re landed, or who aids or is concerned in such un shipping or re landing, shall be liable to a penalty not exceeding three times the value of such goods or not exceeding one thousand rupees</p> <p>such wine, spirit, provisions or stores shall be liable to confiscation</p> <p>such goods shall be liable to confiscation</p> <p>the master of such vessel shall be liable to a penalty not exceeding one thousand rupees</p>

¹ Subs by the Decentralization Act, 1914 (4 of 1914), s 2 and Sch, Pt I, for "L. G."

(Chapter XVI.—Offences and Penalties)

Offences.	Section of this Act to which offence has reference	Penalties
14.—If the master of any vessel arriving which remains outside or below any place so fixed, wilfully omits, for the space of twenty four hours after anchoring, to deliver a manifest as required by this Act	53	such master shall be liable to a penalty not exceeding one thousand rupees
15.—If, after any vessel arriving has entered any customs port in which a place has not been fixed under section 53 the master of such vessel wilfully omits for the space of twenty four hours after anchoring, to deliver a manifest as required by this Act,	54	such master shall be liable to a penalty not exceeding one thou and rupees
16.—If any manifest delivered does not contain the particulars required by section 55 or 63 as the case may be in so far as such particulars are applicable to the ship cargo and voyage, or if any manifest so delivered does not contain a specification true to the best of such person's knowledge of all goods imported or to be exported in such vessel	55 & 63	the person delivering such manifest shall be liable to a penalty not exceeding one thou and rupee
17.—If any goods entered in the import manifest of a vessel are not found on board of the vessel, or if the quantity so found is short and if such deficiency is not accounted for to the satisfaction of the officer in charge of the custom house,	55 & 64	the master of such vessel shall be liable to a penalty not exceeding twice the amount of duty chargeable on the missing or deficient goods if they be dutiable and the duty leviable thereon can be ascertained, or otherwise to a penalty not exceeding five hundred rupees for every missing or deficient package or separate article
18.—If any person required by this Act to receive a manifest from any master of a vessel, refuses so to do, or fails to countersign the same or to enter thereon the particulars referred to in section 56,	53 54 & 56	such person shall be liable to a penalty not exceeding five hundred rupees
19.—If bulk be broken in any vessel previous to the grant by the Customs-collector of an order for entry inwards or a special pass permitting bulk to be broken,	57 & 59	the master of such vessel shall be liable to a penalty not exceeding one thousand rupees

(Chapter XVI—Offences and Penalties)

Offences	Section of this Act to which of fence has reference	Penalties
<p>if any goods the exportation of which is prohibited or restricted as aforesaid be brought to any wharf in order to be put on board of any vessel for exportation contrary to such prohibition or restriction</p> <p>9—</p>	General	such person shall be liable to a penalty not exceeding one thousand rupees
<p>or attests any document relating to any goods on behalf of such owner</p> <p>10—If any goods on the entry of which for re export drawback has been paid are not duly exported or are unshipped or re landed at any customs port (not having been duly re landed or discharged under the provisions of this Act)</p>	47 & 48	such goods together with any vessel used in so unshipping or re landing them shall be liable to confiscation and the master of the vessel from which such goods are so unshipped or re landed and any person by whom or by whose orders or means such goods are so unshipped or re landed or who aids or is concerned in such unshipping or re landing shall be liable to a penalty not exceeding three times the value of such goods or not exceeding one thousand rupees
<p>11—If — — — — — be laden or be unladen from such vessel without the permission of the proper officer of Customs</p>	44 to 48	such wine spirit provisions or stores shall be liable to confiscation
<p>12—If any goods be entered for drawback which are of less value than the amount of the drawback claimed</p>	50	such goods shall be liable to confiscation
<p>13—If in any river or port wherein a place has been fixed under section 53 by the ¹[Chief Customs authority] any vessel arriving passes beyond such place before delivery of a manifest to the pilot officer of Customs or other person duly authorized to receive the same</p>	53	the master of such vessel shall be liable to a penalty not exceeding one thousand rupees

¹ Subs by the Decentralization Act 1914 (4 of 1914), s 2 and Sch, Pt I, for
L O

(Chapter XVI.—Offences and Penalties.)

Offences.	Section of this Act to which of fence has reference	Penalties
14.—If the master of any vessel arriving which remains outside or below any place so fixed, wilfully omits, for the space of twenty four hours after anchoring, to deliver a manifest as required by this Act,	53	such master shall be liable to a penalty not exceeding one thousand rupees
15.—If, after any vessel arriving has entered any customs port in which a place has not been fixed under section 53, the master of such vessel wilfully omits, for the space of twenty four hours after anchoring, to deliver a manifest as required by this Act,	54	such master shall be liable to a penalty not exceeding one thousand rupees
16.—If any manifest delivered under section 53, 54, 60, 63 or 66 is not signed by the person delivering the same and is not in the form or does not contain the particulars required by section 55 or 63 as the case may be in so far as such particulars are applicable to the ship cargo and voyage, or if any manifest so delivered does not contain a specification true to the best of such person's knowledge of all goods imported or to be exported in such vessel,	55 & 63	the person delivering such manifest shall be liable to a penalty not exceeding one thousand rupees
17.—If any goods entered in the import manifest of a vessel are not found on board of the vessel; or if the quantity so found is short, and if such deficiency is not accounted for to the satisfaction of the officer in charge of the custom house,	55 & 64	the master of such vessel shall be liable to a penalty not exceeding twice the amount of duty chargeable on the missing or deficient goods if they be dutiable and the duty leviable thereon can be ascertained, or otherwise to a penalty not exceeding five hundred rupees for every missing or deficient package or separate article
18.—If any person required by this Act to receive a manifest from any master of a vessel, refuses so to do, or fails to countersign the same or to enter thereon the particulars referred to in section 56,	53, 54 & 56	such person shall be liable to a penalty not exceeding five hundred rupees
19.—If broken,	57 & 59	the master of such vessel shall be liable to a penalty not exceeding one thousand rupees

(Chapter XVI —Offences and Penalties)

Offences	Section of this Act to which of fence has reference	Penalties
<p>20.—If any bill of lading or copy required under section 58 is false and the master is unable to satisfy the Customs collector that he was not aware of the fact, or if any such bill or copy has been altered with fraudulent intent or</p> <p>if the goods mentioned in any such bill or copy have not been <i>bona fide</i> shipped as shown therein, or</p> <p>if any such bill of lading or any bill of lading of which a copy is delivered, has not been made previously to the departure of the vessel from the place where the goods referred to in such bill of lading were shipped, or</p> <p>if any part of the cargo has been staved, destroyed or thrown overboard, or if any package has been opened and such part of the cargo or such package be not accounted for to the satisfaction of the Customs collector,</p>	58	the master of the vessel shall be liable to a penalty not exceeding one thousand rupees
21.—If any master of a vessel attempts to depart without a port clearance	62	such master shall be liable to a penalty not exceeding five hundred rupees
22.—If any vessel actually departs without a port clearance	62	the master of such vessel shall be liable to a penalty not exceeding one thousand rupees
23.—If any pilot takes charge of any vessel proceeding to sea notwithstanding that the master of such vessel does not produce a port clearance,	62	such pilot on conviction before a Magistrate shall be liable to fine not exceeding one thousand rupees
24.—If any master of a vessel refuses to receive on board an officer of Customs deputed under section 67,	68	such master shall be liable to a penalty not exceeding five hundred rupees for each day during which such officer is not received on board, and the vessel if not entered shall not be allowed to enter until such penalty is paid
<p>25.—If any master of a vessel refuses to</p> <p>means of cooking on board,</p>	68	such master shall in each such case, be liable to a penalty not exceeding five hundred rupees

(Chapter XVI.—Offences and Penalties.)

Offences	Section of this Act to which of fence has reference	Penalties
<p>26—If any master of a vessel refuses to allow such vessel or any box, place or closed receptacle in such vessel, to be searched when so required by an officer of Customs bearing a written order to search, or</p> <p>if an officer of Customs places any lock, mark or seal upon any goods in a vessel and such lock, mark or seal is wilfully opened, altered or broken, before due delivery of such goods, or</p> <p>if any such goods are secretly conveyed away, or</p> <p>if any hatchway or entrance to the hold of a vessel, after having been fastened down by an officer of Customs, is opened without his permission,</p>	69	<p>the master of such vessel shall be liable, upon conviction before a Magistrate, to a fine not exceeding one thousand rupees</p>
<p>27—If the master of any vessel laid up by the withdrawal of the officer of Customs shall before application is made by him for an officer of Customs to superintend the receipt of cargo cause or suffer to be put on board of such vessel any goods whatever, in contravention of section 70,</p>	70	<p>such master shall be liable to a penalty not exceeding one thousand rupees, and the goods, if protected by a pass shall be liable to be re landed for examination at the expense of the vessel, and, if not protected by a pass, shall be liable to confiscation</p>
<p>28—If any master of a vessel in any case other than that provided for by No 27, causes or suffers any goods to be discharged shipped or water borne contrary to any of the provisions of section 70, 72 or 75,</p>	70, 72 & 75	<p>such master shall be liable to a penalty not exceeding one thousand rupees, and all goods so discharged, shipped or water borne shall be liable to confiscation</p>
<p>29—If, when a boat note is required by section 76 any goods water borne for the purpose of being landed from any vessel, and ware housed or passed for importation, or of being shipped for exportation, be found without such note, or</p> <p>if any goods are found on board any boat in excess of such boat note, whether such goods are intended to be landed from, or to be shipped on board of, any vessel,</p>	76	<p>such goods shall be liable to confiscation, and the person by whose authority the goods are being landed or shipped, and the person in charge of the boat, shall each be liable to a penalty not exceeding twice the amount of duty (if any) leviable on the said goods</p>

(Chapter XVI.—Offences and Penalties)

Offences	Section of this Act to which of fence has reference	Penalties
<p>30 —If any person refuses to receive, or fails to comply with the requisition, or fails to make such requisition,</p>	76	such person, master or officer shall be liable to a penalty not exceeding five hundred rupees
<p>31 —If any goods are, without permission, shipped or water borne to be shipped, or are landed, except from or at a wharf or other place duly appointed for the purpose, or if any goods water borne for the purpose of being landed or shipped are not landed or shipped without unnecessary delay, or if the boat containing such goods be found out of the proper track between the vessel and the wharf or other proper place of landing or shipping, and such deviation be not accounted for to the satisfaction of the Customs collector or</p>	73 77	such goods shall be liable to confiscation, and the person by whose authority the goods are shipped, landed, water borne or transhipped, and the person in charge of the vessel employed in conveying them, shall each be liable to a penalty not exceeding twice the amount of the duty (if any) leviable on such goods.
<p>if any goods are transhipped contrary to the provisions of section 78,</p>	78	
<p>32 —If after the issue of a notification under section 79 with regard to any port, any goods are found within the limits of such port on board of any boat not duly licensed and registered,</p>	79	such goods, unless they are covered by a special permit from the Customs collector shall be liable to confiscation, and the owner or the person in charge of the boat shall be liable to a penalty not exceeding one hundred rupees
<p>33 —If any master of a vessel discharges or suffers to be discharged any goods not duly entered in the manifest of such vessel,</p>	55 & 82	such master shall be liable to a penalty not exceeding one thousand rupees
<p>34 —If any goods are found concealed in any place, box or closed receptacle in any vessel, and are not duly accounted for to the satisfaction of the officer in charge of the custom house,</p>	General	such goods shall be liable to confiscation
<p>35.—If any goods are found on board in excess of those entered in the manifest, or not corresponding with the specification therein contained,</p>	55 & 82	such goods shall be liable to confiscation, or to be charged with such increased rates of duty as the Chief Officer of Customs directs.

(Chapter XVI.—Offences and Penalties)

Offences.	Section of this Act to which of fence has reference	Penalties
36—If, after any goods have been landed and before they have been passed through the custom house the owner removes or attempts to remove them, with the intention of defrauding the revenue,	86 & 87	such goods shall be liable to confiscation, or if the goods cannot be recovered, the owner shall be liable, in addition to full duty, to a penalty not exceeding twice the amount of such duty, if the goods be dutiable and the duty leviable thereon can be ascertained, or otherwise to a penalty not exceeding one thousand rupees for every missing or deficient package or separate article
37—If it be found, when any goods are entered at, or brought to be passed through a custom house either for importation or exportation that—	86 & 137	such packages, together with the value of the goods contained therein, shall be liable to confiscation, and every person concerned in any such offence shall be liable to a penalty not exceeding one thousand rupees
(a) the packages in which they are contained differ widely from the description given in the bill of entry or application for passing them, or		
(b) the contents of the packages		
exported, or		
(c) the contents of such packages have been misstated in regard to sort, quality, quantity or value or		
(d) the contents of the packages		
officers of Customs,		
and such circumstance is not accounted for to the satisfaction of the Customs collector,		
38.—If, when goods are passed by tale or by package, any omission or misdescription thereof tending to injure the revenue be discovered,	86 & 94	the person guilty of such omission or misdescription shall be liable to a penalty not exceeding ten times the amount of duty which

(Chapter XVI—Offences and Penalties)

Offences	Section of this Act to which of fence has reference	Penalties
39—If, without entry duly made, any goods are taken or passed out of any custom house or wharf	86	might have been lost to Government by such omission or misdescription, unless it be proved to the satisfaction of the officer in charge of the custom house that the variance was accidental the person so taking or passing such goods shall in every such case, be liable to a penalty not exceeding five hundred rupees and such goods shall be liable to confiscation
40—If any prohibited or dutiable goods are found, either before or after landing, concealed in any passenger's baggage,	General	such passenger shall be liable to a penalty not exceeding five hundred rupees and such goods shall be liable to confiscation
41—If any goods entered to be warehoused are carried into the warehouse, unless with the authority, or under the care of the proper officers of Customs and in such manner, by such persons, with in such time, and by such roads or ways as such officers direct	93	such goods shall be liable to confiscation, and any person so carrying them shall be liable to a penalty not exceeding one thousand rupees
42—If any goods entered to be warehoused are not duly warehoused in pursuance of such entry, or are withheld or removed from any proper place of examination before they have been examined and certified by the proper officer,	94	such goods shall be deemed not to have been duly warehoused, and shall be liable to confiscation
43—If any warehoused goods be not warehoused in accordance with sections 94 and 95	94 & 95	such goods shall be liable to confiscation
44—If the licensee of any private warehouse licensed under this Act does not open the same when required so to do by any officer entitled to have access thereto, or upon demand made by any such officer refuses access to any such officer	97	such licensee shall be liable to a penalty not exceeding one thousand rupees and shall further be liable to have his license forthwith cancelled
45.—If the keeper of any public warehouse or the licensee of any private warehouse, neglects to stow the goods warehoused therein so that easy access may be had to every package and parcel thereof	Chap XI	such keeper or licensee shall, for every such neglect, be liable to a penalty not exceeding fifty rupees

(Chapter XVI—Offences and Penalties)

Offences	Section of this Act to which of- fence has reference	Penalties
46 —If the owner of any warehoused goods or any person in the employ of such owner, clandestinely opens any ware house, or, except in presence of the proper officer of Customs, gains access to his goods	99	such owner or person shall in every such case be liable to a penalty not exceeding one thousand rupees
47 —If any warehoused goods are opened in contravention of the provisions of section 93, or if any alteration be made in such goods or in the packing thereof, except as provided in section 100	93 & 100	such goods shall be liable to confiscation
48 —If any goods lodged in a private warehouse are found at the time of delivery therefrom to be deficient and such deficiency is not due solely to ullage or wastage as allowed under sections 116 and 117	123	the licensee of such warehouse shall unless the deficiency be accounted for to the satisfaction of the Customs collector be liable to a penalty equal to five times the duty chargeable on the goods so deficient
49 —If the keeper of any public warehouse, or the licensee of any private warehouse fails on the requisition of any officer of Customs to produce any goods which have been deposited in toms collector	123	such keeper or licensee shall for every such failure be liable to pay the duties due on such goods and also a penalty not exceeding fifty rupees in respect of every package or parcel so missing or deficient
50 —If any goods after being duly warehoused are fraudulently concealed in or removed from the warehouse, or abstracted from any package or transferred from one package to another or otherwise for the purpose of illegal removal or concealment	Chap XI	such goods shall be liable to confiscation and any person concerned in any such offence shall be liable to a penalty not exceeding one thousand rupee
51 —If any goods lodged in a private warehouse are found to exceed the registered quantity,	Ditto	such excess unless accounted for to the satisfaction of the officer in charge of the customhouse shall be charged with five times the ordinary duty thereon
52 —If any goods be removed from the warehouse in which they were originally de-	Ditto	such goods shall be liable to confiscation and any person so removing them shall be liable to a penalty not exceeding one thousand rupees

(Chapter XVI.—Offences and Penalties.)

Offences.	Section of this Act to which of fence has reference	Penalties.
53 —If any person illegally takes any goods out of any warehouse without payment of duty, or aids, assists or is concerned therein,	Chap XI	such person shall be liable to a penalty not exceeding one thousand rupees
54 —If any person contravenes any rule regarding the process of transhipment made by the ¹ [Chief Customs authority,] or any prohibition or order relating to transhipment notified by the ² [Central Government], or tranships goods not allowed to be transhipped,	130 134	such person shall be liable to a penalty not exceeding one thousand rupees, and any goods in respect of which such offence has been committed shall be liable to confiscation
55 —If any goods be taken on board of any vessel at any customs port in contravention of section 136,	136	the master of such vessel shall be liable to a penalty not exceeding one thousand rupees
56 —If any goods not specified in a duly passed shipping bill are taken on board of any vessel, contrary to the provisions of section 137,	137	the master of such vessel shall be liable to a penalty not exceeding fifty rupees for every package of such goods
-- -- and notice of such short shipment or relanding be not given as required by section 140,	140	the owner of such goods shall be liable to a penalty not exceeding one hundred rupees, and such goods shall be liable to confiscation
58 —If any goods duly shipped on board of any vessel be landed, except under section 141, 142 or 143, at any place other than that for which they have been cleared,	141	the master of such vessel shall, unless the landing be accounted for to the satisfaction of the Customs collector, be liable to a penalty not exceeding three times the value of such goods so landed
59 —If any goods on account of which drawback has been paid be not found on board of any vessel referred to in section 142,	³ [142]	the master of such vessel shall be liable to a penalty not exceeding the entire value of such goods, unless the fact be accounted for to the satisfaction of the Customs-collector.

¹ Subs by the Decentralization Act, 1914 (4 of 1914), s 2 and Sch, Pt I, for "L G"

² Subs by the A O for 'G G in C'

³ Subs by the Amending Act, 1891 (12 of 1891), for "141".

(Chapter XVI.—Offences and Penalties)

Offences	Section of this Act to which of fence has reference	Penalties
60 —If any person, without a special pass from an officer of Excise at the place of exportation, relands or attempts to reland any spirit shipped for exportation,	154	such person shall be liable to a penalty not exceeding five hundred rupees
61 —If any person wilfully contravenes any rule relating to spirits made under section 155,	155	such person shall be liable to a penalty not exceeding five hundred rupees, and all such spirit shall be liable to confiscation
62 —If, in contravention of any rules made under section 157, any goods are taken into, or put out of, or carried in, any coasting vessel, or if any such rules be otherwise infringed,	157	the master of such vessel shall be liable to a penalty not exceeding one thousand rupees
63 —If, contrary to any such rules, any coasting vessel touches at any foreign port, or deviates from her voyage, unless forced by unavoidable circumstances, or if the master of any such vessel which first arrives,	159	the master of such vessel shall be liable to a penalty not exceeding one thousand rupees and if any goods liable to export duty have been landed from, or any goods liable to import duty have been shipped in such vessel at such foreign port, such master shall further be liable to a penalty not exceeding three times the duty which would have been leviable on such goods if they had been exported from, or imported at, a customs port to or from a foreign port, as the case may be
84 —If in the case of any coasting vessel any of the provisions of section 158, 159 or 160 are not complied with,	158, 159 & 160	the master of such vessel shall in each such case be liable to a penalty not exceeding five hundred rupees
65 —If the person executing any bond given under section 161 fail to produce the certificate mentioned in the same section, or to show sufficient reason for its non production,	161	such person shall be bound to pay a penalty equal to double the amount of customs duties which would have been chargeable on the export cargo of the vessel had she been declared to be bound to a foreign port

(Chapter XVI—Offences and Penalties)

Offences	Section of this Act to which offence has reference	Penalties
66—If the master of any coasting vessel violates any of the conditions under which a general pass for such vessel has been granted,	164	such master shall be liable to a penalty not exceeding one thousand rupees
67—If any master of a coasting vessel contravenes any of the provisions of section 163,	165	such master shall be liable to a penalty not exceeding five hundred rupees
68—If, upon examination, any package entered in the cargo book required by section 163 as containing dutiable goods is found not to contain such goods, or if any package is found to contain dutiable goods not entered, or not entered as such, in such book,	165	such package, with its contents, shall be liable to confiscation
69—If the master of any coasting vessel required under section 165 to keep a cargo book fails correctly to keep, or to cause to be kept such book, or to produce the same on demand, or if at any time there be found on board of any such vessel any goods not entered in such book as laden, or any goods noted as delivered, or if any goods entered as laden, and not noted as delivered, be not on board	165	such master shall be liable to a penalty not exceeding five hundred rupees
70—If, contrary to the provisions of this or any other law for the time being in force relating to the Customs, any goods are laden on board of any vessel in any customs port and carried coastwise, or if any goods which have been brought coastwise are so unladen in any such port, or if any goods are found on board of any coasting vessel without being entered in the manifest or cargo book or both (as the case may be) of such vessel,	Chap XV	such goods shall be liable to confiscation, and the master of such vessel shall be liable to a penalty not exceeding five hundred rupees
71—If the master of any coasting vessel refuses to bring any document to the Customs collector when so required under section 166,	166	such master shall be liable to a penalty not exceeding two hundred rupees
72—If any person makes or signs or uses, any declaration or document used in the transaction of any business relating to the Customs, knowing such declaration or document to be false in	General	such person shall, on conviction of any such offence before a Magistrate, be liable to a fine not exceeding one thousand rupees

(Chapter XVI—Offences and Penalties)

Offences	Section of this Act to which of fence has reference	Penalties
<p>any particular, or counterfeits, falsifies or fraudulently alters or destroys</p> <p>relating to the Customs, or,</p> <p>being required under this Act to produce any document, refuses or neglects to produce such document, or,</p> <p>being required under this Act to answer any question put to him by an officer of Customs, does not truly answer such question,</p>		
<p>73 —If any person on board of any vessel or boat in any customs port, or who has landed from any such vessel or boat,</p> <p>any such goods are, after such denial, found about his person or in his possession,</p>	General	such goods shall be liable to confiscation, and such person shall be liable to a penalty not exceeding three times the value of such goods
<p>74 —If any officer of Customs require any person to be searched for dutiable or pro</p>	169	such officer shall, on conviction before a Magistrate, be liable to a fine not exceeding five hundred rupees
<p>75 —If any officer of Customs or other person duly employed for the prevention of smuggling is guilty of a wilful breach of the provisions of this Act,</p>	General	such officer or person shall, on conviction before a Magistrate be liable to simple imprisonment for any term not exceeding two years or to fine, or to both
<p>76 —If any officer of Customs, or other person duly employed for the prevention of smuggling, practises, or attempts to practise, any fraud for the purpose of injuring the customs revenue, or abets or connives at any such fraud or any attempt to practise any such fraud,</p>	Ditto	Ditto ditto
<p>77 —If any Police officer, whose duty it is, under section 180, to send a written notice or cause goods to be conveyed to a custom house, neglects so to do,</p>	180	such officer shall, on conviction before a Magistrate, be liable to a penalty not exceeding one hundred rupees

(Chapter XVI —Offences and Penalties)

Offences	Section of this Act to which of fence has reference	Penalties
78 —If any person intentionally obstructs any officer of Customs or other person duly employed for the prevention of smuggling in the exercise of any powers given under this Act to such officer or person	General	such person shall, on conviction before a Magistrate, be liable to imprisonment for any term not exceeding six months or to a fine not exceeding one thousand rupees, or to both
79 —If any officer of Customs except in the discharge in good faith of his duty as such officer, discloses any particulars learned by him in his official capacity in respect of any goods or shows any samples delivered to him in such capacity, or if any officer of Customs except as permitted by this Act, parts with the possession of any samples delivered to him in his official capacity,	195	he shall be liable to a penalty not exceeding one thousand rupees
80 —If any person, without the approval of the Customs collector under section 202, acts as an agent for the transaction of business as therein mentioned	202	such person shall be liable to a penalty not exceeding five hundred rupees

Nothing in the second column of the above schedule shall be deemed to have the force of law

Packages and contents included in confiscation of goods

168. The confiscation of any goods under this Act includes any package in which they are found, and all the other contents thereof

Also conveyances and animals used in removal

Every vessel, cart or other means of conveyance, and every horse or other animal, used in the removal of any goods liable to confiscation under this Act shall in like manner be liable to confiscation

Tackle, etc., included in confiscation of vessels

The confiscation of any vessel under this Act includes her tackle, apparel and furniture

(Chapter XVII.—*Procedure relating to Offences, Appeals, etc*)

CHAPTER XVII¹

PROCEDURE RELATING TO OFFENCES, APPEALS, ETC

169 Any officer of Customs duly employed in the prevention of smuggling may search any person on board of any vessel in any port in British India, or any person who has landed from any vessel

Power to search on reasonable suspicion

Provided that such officer has reason to believe that such person has dutiable or prohibited goods secreted about his person

170. When any officer of Customs is about to search any person under the provisions of section 169, such person may require the said officer to take him, previous to search, before the nearest Magistrate or Customs-collector

Persons may, before search, require to be taken before Magistrate or Customs collector

If such requisition be made, the officer of Customs may detain the person making it until he can bring him before the nearest Magistrate or Customs collector

The Magistrate or Customs collector before whom any person is so brought shall, if he see no reasonable ground for search forthwith discharge such person, but if otherwise, shall direct that the search be made

A female shall not be searched by any but a female

171 Any duly empowered officer of Customs or other person duly employed for the prevention of smuggling, may stop and search for smuggled goods any vessel, cart or other means of conveyance provided that he has reason to believe that smuggled goods are contained therein

Power to stop vessels, carts etc and search for goods on reasonable suspicion

172. Any Magistrate may, on application by a Customs collector, stating his belief that dutiable or prohibited goods are secreted in any place within the local limits of the jurisdiction of such Magistrate, issue a warrant to search for such goods

Power to issue search warrants

Such warrant shall be executed in the same way and shall have the same effect, as a search-warrant issued under the law relating to Criminal Procedure²

173. Any person against whom a reasonable suspicion exists that he has been guilty of an offence under this Act may be arrested in any place, either upon land or water, by any officer of Customs or other person duly employed for the prevention of smuggling

Person reasonably suspected may be arrested

¹ The powers conferred on officers of Customs under this Chapter may be exercised by them for the prevention of offences against the Indian Emigration Act, 1922 (7 of 1922), see s 29 of that Act

² See now the Code of Criminal Procedure 1898 (5 of 1898)

(Chapter XVII — Procedure relating to Offences, Appeals, etc.)

Persons
arrested to
be taken to
nearest Ma-
gistrate or
Customs
collector

174 Every person arrested on the ground that he has been guilty of an offence under this Act shall forthwith be taken before the nearest Magistrate or Customs collector

Persons
taken before
Magistrate
may be de-
tained or
admitted to
bail

175 When any such person is taken before a Magistrate, such Magistrate may, if he thinks fit, either commit him to gaol or order him to be kept in the custody of the Police for such time as is necessary to enable such Magistrate to communicate with the proper officers of Customs

Provided that any person so arrested, committed or kept shall be released on giving security to the satisfaction of the Magistrate to appear at such time and place as such Magistrate appoints in this behalf

Person
escaping
may be
afterwards
arrested

176 If any person liable to be arrested under this Act is not arrested at the time of committing the offence for which he is so liable, or after arrest make his escape, he may at any time afterwards be arrested and taken before a Magistrate, to be dealt with as if he had been arrested at the time of committing such offence

Persons in
Her Majesty's
Navy
or His
Majesty's
Indian Navy
when ar-
rested to be
secured on
board until
warrant
procured

177 When any person employed on the crew of any of the ships of Her Majesty's Navy ¹[or His Majesty's Indian Navy] is arrested under this Act, the arresting officer shall forthwith give notice thereof to the commanding officer of the ship, who shall thereupon place such person in security on board of such ship, until the arresting officer has obtained a warrant from a Magistrate for bringing up such person to be dealt with according to law

The Magistrate shall grant such warrant upon complaint made to him by the arresting officer, stating the offence for which the person is detained

Seizure of
things liable
to confisca-
tion

178. Any things liable to confiscation under this Act may be seized in any place, either upon land or water, by any officer of Customs or other person duly employed for the prevention of smuggling

Things
seized
how dealt
with

179. All things seized on the ground that they are liable to confiscation under this Act shall, as soon as conveniently may be, be delivered into the care of any Customs-officer authorized to receive the same

If there be no such officer at hand, all such things shall be carried to and deposited at the custom house nearest to the place of seizure

If there be no custom house within a convenient distance, such things shall be deposited at the nearest place appointed by the ²[Chief Customs officer] for the deposit of things so seized

¹Subs. by the A. O. for Indian Marine or Marine Survey

²Subs. by the Decentralization Act 1914 (4 of 1914) s. 2 and Sch. Pt. I for Chief Customs authority

(Chapter XVII — Procedure relating to Offences Appeals etc)

180 When any things liable to confiscation under this Act are seized by any Police officer on suspicion that they have been stolen he may carry them to any police station or Court at which a complaint connected with the stealing or receiving of such things has been made or an enquiry connected with such stealing or receiving is in progress and there detain such things until the dismissal of such complaint or the conclusion of such enquiry or of any trial thence resulting

Procedure
in respect
of things
seized on
su p c on

In every such case the Police officer seizing the things shall send written notice of their seizure and detention to the nearest custom house and immediately after the dismissal of the complaint or the conclusion of the enquiry or trial he shall cause such things to be conveyed to and deposited at the nearest custom house to be there proceeded against according to law

181 When anything is seized or any person is arrested under this Act the officer or other person making such seizure or arrest shall on demand of the person in charge of the thing so seized or of the person so arrested give him a statement in writing of the reason for such seizure or arrest

When seizure
or arrest is
made reason
in writing to
be given

¹[181A (1 The Chief Customs officer or other officer authorised by the ²[Provincial Government] in this behalf may detain any package brought whether by land or sea into British India which he suspects to contain—

Power to
detain
packages
containing
certain pub
lications im
ported into
British
India

(a) any newspaper or book as defined in the Press and Registration of Books Act 1867 or

(b) any document

containing any seditious matter that is to say any matter the publication of which is punishable under section 124A of the Indian Penal Code and shall forward such package to such officer as the ²[Provincial Government] may appoint in this behalf

(2) Any officer detaining a package under the provisions of sub-section (1) shall where practicable forthwith send by post to the addressee or consignee of such package notice of the fact of such detention

(3) The ²[Provincial Government] shall cause the contents of such package to be examined and if it appears to the ²[Provincial Government] that the package contains any such newspaper book or other document containing any such seditious matter may pass such orders

¹ Inserted by the Press Law Repeal and Amendment Act 1922 (14 of 1922) s. 4 and Sch. II

Subs. by the A. O. for L. G.

(Chapter XVII.—Procedure relating to Offences, Appeals, etc.)

as to the disposal of the package and its contents as it may deem proper, and, if it does not so appear, shall release the package and its contents unless the same be otherwise liable to seizure under any law for the time being in force

Provided that any person interested in any package detained under the provisions of this section may, within two months from the date of such detention, apply to the ¹[Provincial Government] for release of the same, and the ¹[Provincial Government] shall consider such application and pass such orders thereon as it may deem to be proper

Provided, further, that, if such application is rejected, the applicant may, within two months from the date of the order rejecting the application, apply to the High Court for release of the package or its contents on the ground that the package did not contain any such newspaper, book or other document containing any such seditious matter

(4) In this section, "document" includes also any painting, drawing or photograph, or other visible representation]

²[181B Every application under the second proviso to sub section (3) of section 181A shall be heard and determined, in the manner provided by sections 99D to 99F of the Code of Criminal Procedure, 1898, v of 1 by a Special Bench of the High Court constituted in the manner provided by section 99C of that Code]

²[181C. No order passed or action taken under section 181-A shall be called in question in any Court otherwise than in accordance with the second proviso to sub section (3) of that section]

³182 In every case, except, the cases mentioned in section 167 Nos 26, 72 and 74 to 76, both inclusive, in which, under this Act, any thing is liable to confiscation or to increased rates of duty,

or any person is liable to a penalty,

such confiscation, increased rate of duty or penalty may be adjudged—

(a) without limit, by a Deputy Commissioner or Deputy Collector of Customs, or a Customs collector.

(b) up to confiscation of goods not exceeding two hundred and fifty rupees in value, and imposition of penalty or increased duty, not exceeding one hundred rupees, by an

¹ Subs. by the A. O. for "L. G."

² Ins. by the Press Law Repeal and Amendment Act, 1922 (14 of 1922), s. 4 and Sch. II

³ For notifications issued under this section see Bom. Govt. Gazette, 1933, Pt. I, p. 1321

Procedure for disposal by High Court of applications for release of packages so detained Jurisdiction barred

Adjudication of confiscations and penalties

(Chapter LVII—Procedure relating to Offences Appeals etc)

Assistant Commissioner or Assistant Collector of Customs,

- (c) up to confiscation of goods not exceeding fifty rupees in value, and imposition of penalty or increased duty not exceeding ten rupees by such other subordinate officers of Customs as the ¹[Chief Customs authority] may, from time to time empower in that behalf in virtue of their office

Provided that the ¹[Chief Customs authority] may, in the case of any officer performing the duties of a Customs collector, limit his powers to those indicated in clause (b) or in clause (c) of this section, and may confer on any officer by name or in virtue of his office, the powers indicated in clauses (a), (b) or (c) of this section

183 Whenever confiscation is authorized by this Act, the officer adjudging it shall give the owner of the goods an option to pay in lieu of confiscation such fine as the officer thinks fit

Option to pay fine in lieu of confiscation

184 When anything is confiscated under section 182 such thing shall thereupon vest in Her Majesty

On confiscation property to vest in Her Majesty

The officer adjudging confiscation shall take and hold possession of the thing confiscated and every officer of Police on the requisition of such officer, shall assist him in taking and holding such possession

185 If any vessel actually departs without a port clearance, or after failing to bring to when required at any station appointed under section 17 the penalty to which the master of such vessel is liable may be adjudged by the Chief Customs officer of any customs port to which such vessel proceeds or in which she is ²*

Levy of penalty for failure to bring to

A certificate of such departure or failure to bring to when required, purporting to be signed by the Chief Customs officer of the port from which the vessel is stated to have so departed shall be *prima facie* proof of the fact so certified

186 The award of any confiscation penalty or increased rate of duty under this Act by an officer of Customs shall not prevent the infliction of any punishment to which the person affected thereby is liable under any other law

Penalty under Act not to interfere with punishment under other law

187 All offences against this Act other than those cognizable under section 182 by officer of Customs may be tried summarily by a Magistrate

Offences not specially provided for how tried

¹ Subs. by the Decentralization Act 1914 (4 of 1914) s. 2 and Sch. Pt. I for "L.G."

² The words "and in the case of Aden by such officer as the C. in Council appoints in this behalf" rep. by the A. O.

(Chapter XVII — Procedure relating to Offences, Appeals etc.)

Appeal from
subordinate
to Chief
Customs
authority

188 Any person deeming himself aggrieved by any decision or order passed by an officer of Customs under this Act may, within three months from the date of such decision or order, appeal therefrom to the Chief Customs authority, or, in such cases as ¹[the Central Government] directs, to any officer of Customs not inferior in rank to a Customs collector and empowered in that behalf by name or in virtue of his office by ¹[the Central Government]

Such authority or officer may thereupon make such further inquiry and pass such order as he thinks fit, confirming, altering or annulling the decision or order appealed against

Provided that no such order in appeal shall have the effect of subjecting any person to any greater confiscation, penalty or rate of duty than has been adjudged against him in the original decision or order

Every order passed in appeal under this section shall, subject to the power of revision conferred by section 191, be final

Deposit,
pending ap-
peal of duty
demanded

189 Where the decision or order appealed against relates to any duty or penalty leviable in respect of any goods, the owner of such goods, if desirous of appealing against such decision or order, shall, pending the appeal, deposit in the hands of the Customs collector at the port where the dispute arises the amount demanded by the officer passing such decision or order

When delivery of such goods to the owner thereof is withheld merely by reason of such amount not being paid, the Customs collector shall, upon such deposit being made cause such goods to be delivered to such owner

If upon any such appeal it is decided that the whole or any portion of such amount was not leviable in respect of such goods, the Customs collector shall return such amount or portion (as the case may be) to the owner of such goods on demand by such owner

Power to
remit penal-
ty or confi-
scation

190 If upon consideration of the circumstances under which any penalty, increased rate of duty or confiscation has been adjudged under this Act by an officer of Customs, the Chief Customs authority is of opinion that such penalty, increased rate or confiscation ought to be remitted in whole or in part or commuted, such authority may remit the same or any portion thereof, or may with the consent of the owner of any goods ordered to be confiscated commute the whole or confiscation to a penalty not exceeding the value of such goods

¹ Subs. by the A. O. for 'the G. G. in C.' which had been subs. for 'the I. G.' by s. 4 and Sch. of the Central Board of Revenue Act 1924 (4 of 1924)

(Chapter XVII—*Procedure relating to Offences, Appeals, etc*
Chapter XVIII—*Miscellaneous*)

191 ¹[The Central Government] may, on the application of any person aggrieved by any decision or order passed under this Act by any officer of Customs or Chief Customs authority, and from which no appeal lies, reverse or modify such decision or order

Revision by
the Central
Government

192 When any fine, penalty or increased rate of duty is leviable under this Act, the goods in respect of which such fine, penalty or rate is leviable shall not be removed by the owner until such fine, penalty or rate is paid

Goods on
which
penalty in
currred not to
be removed
till payment

If any person has become liable to any such fine, penalty or rate in respect of any goods, the Customs-collector may detain any other goods belonging to such person passing through the custom house until such fine, penalty or rate is paid

Other goods
of person
liable to fine
or penalty
may be
detained

193 When a penalty or increased rate of duty is adjudged against any person under this Act by any officer of Customs, such officer, if such penalty or increased rate be not paid may levy the same by sale of any goods of the said person which may be in his charge or in the charge of any other officer of Customs

Enforcement
of payment
of penalty

When an officer of Customs who has adjudged a penalty or increased rate of duty against any person under this Act is unable to realize the unpaid amount thereof from such goods such officer may notify in writing to any Magistrate within the local limits of whose jurisdiction such person or any goods belonging to him may be, the name and residence of the said person and the amount of penalty or increased rate of duty unrecovered, and such Magistrate shall thereupon proceed to enforce payment of the said amount in like manner as if such penalty or increased rate had been a fine inflicted by himself

CHAPTER XVIII

MISCELLANEOUS

194 Any officer of Customs may open any package, and examine any goods brought by sea to, or shipped or brought for shipment at, any customs port

Power to
open pack-
ages and
examine
goods

¹ Subs. by the A. O. for "The G. G. in C." which had been subs. for "The L. G." by s. 4 and Sch. of the Central Board of Revenue Act, 1924 (4 of 1924)

(Chapter XVIII—Miscellaneous)

Power to
take samples
of goods

195 1(1) The Customs collector may, on the entry or clearance of any goods or at any time while such goods are being passed through the custom-house, take samples of such goods, for examination or for ascertaining the value thereof on which duties are payable, or for any other necessary purpose

Every such sample shall, if practicable, be at the option of the owner either restored to him, or sold and the proceeds accounted for to him

2[(2) In the case of goods which consist of drugs or articles intended for consumption as food, and in respect of which the taking of samples for the purposes of this sub section may have been authorised by general or special order of the 3[Provincial Government], the Customs collector may also in like circumstances take samples thereof for submission to, and examination by, such officer of Government or of a local authority as may be specified in such order. The real value of all such samples shall be paid to the owner by the Customs-collector.]

Power to
make rules
for determin-
ing whether
mineral oil is
suitable for
use as an
illuminant

4[195A. (1) When by any law for the time being in force a duty of customs is imposed on mineral oil which is specified as being suitable or as not being suitable for use as an illuminant in wick lamps, the Chief Customs Authority may make rules for determining in disputed cases whether any mineral oil is or is not suitable for such use

(2) In particular such rules may—

- (a) specify the design, construction and materials of test lamps to be used for testing the burning properties of mineral oil in wick lamps and provide for the standardisation of such test lamps, and
- (b) prescribe the manner in which and the persons by whom tests are to be carried out and the standards to be accepted for deciding whether any mineral oil is or is not suitable for use as an illuminant in wick lamps]

Owner to
pay expense
incidental to
compliance
with Cus-
toms law

196 The unshipping, carrying, shipping and landing of all goods, and the bringing of them to the proper place for examination or weighing, and the putting of them into and out of the scales, and the opening, unpacking, bulking, sorting, lotting, marking and numbering of goods, where such operations are necessary or permitted,

¹ Renumbered by s 2 of the Sea Customs (Amendment) Act, 1919 (13 of 1919)

² Ins by s 2, *ibid*

³ Subs by the A O for "L. G"

⁴ Ins by the Indian Tariff (Second Amendment) Act, 1933 (28 of 1933) s 4

(Chapter XVIII — Miscellaneous)

and the removing of goods to, and the placing of them in, the proper place of deposit,

shall be performed by or at the expense of the owner of such goods

197 No owner of goods shall be entitled to claim from any officer of Customs compensation for any loss or damage occurring to such goods at any time while they remain or are lawfully detained in any custom house, or on any custom house wharf, or under charge of any officer of Customs, unless it be proved that such loss or damage was occasioned by the neglect or wilful act of such officer of Customs

No compensation for loss or injury except on proof of neglect or wilful act

198 No proceeding other than a suit shall be commenced against any person for anything purporting to be done in pursuance of this Act without giving to such person a month's previous notice in writing of the intended proceeding and of the cause thereof, or

Notice of proceedings

after the expiration of three months from the accrual of such cause

Limitation

199 The ¹[Chief Customs-officer] may from time to time fix the period after the expiration of which goods left on any custom house wharf, or other authorized landing place or part of the custom house premises shall be subject to payment of fees and the amount of such fees ²

Wharfage fees

200 A duplicate of any certificate manifest bill or other custom-house document may on payment of a fee not exceeding ten rupees be furnished at the discretion of the Customs collector to any person applying for the same if the Customs collector is satisfied that no fraud has been committed or is intended by the applicant

Duplicates of documents may be granted on payment of fee

201 Except in the cases provided for by sections 36 55 63 and 94, the Customs collector may in his discretion, upon payment of one rupee, authorize any document, after it has been entered and recorded in the custom house to be amended

Amendment of documents

202 No person authorized to act as an agent for the transaction of any business relating to the entrance or clearance of any vessel or the import or export of goods or baggage shall so act in any custom house unless such authorization is approved by the Customs collector

Custom house agents

Such officer may require any person so authorized to give a bond with sufficient security in any sum not exceeding five thousand rupees for his faithful behaviour as regards the custom house regulations and officers

Such officer may, in case of misbehaviour of the person so authorized suspend or withdraw such approval, but an appeal against every such

¹ Subs. by the Decentralization Act 1914 (4 of 1914) s 2 and Sch., Pt. I for Chief Customs authority

² For orders fixing such fees in Madras and Bombay, see respective R & O

(Chapter XVIII—Miscellaneous)

suspension or withdrawal shall lie to the Chief Customs-authority, whose decision thereon shall be final

Every appeal under this section shall be made within one month of the suspension or withdrawal

Agent to
produce
authority if
required

203 When any person applies to any officer of Customs for permission to transact any specified business with him on behalf of any other person, such officer may require the applicant to produce a written authority from the person on whose behalf such business is to be transacted and in default of the production of such authority may refuse such permission

The clerk, servant or agent of any person or mercantile firm may transact business generally at the custom house on behalf of such person or firm. Provided that the Customs collector may refuse to recognize such clerk, servant or agent unless such person or a member of such firm identifies such clerk, servant or agent to the Customs collector as empowered to transact such business, and deposits with the Customs-collector an authority in writing duly signed, authorizing such clerk, servant or agent to transact such business on behalf of such person or firm

Rules to be
notified

204 All rules¹ made under this Act shall be notified in the Official Gazette and shall thereupon have the force of law

All such rules for the time being in force shall be collected, arranged and published at intervals not exceeding two years, and shall be sold to the public at a reasonable price

Publication
of notifica-
tions in
Official
Gazettes

²[205 Any notification published in the ³[Official Gazette] by the Chief Customs authority under section 53, section 74, section 76, section 79, section 85, section 96, section 116, section 128, section 133 or section 147 shall forthwith be re published ⁴[with the consent of the Provincial Government] in the ⁵[Official Gazette] of each province to which it relates]

Remission of
duty and
compensation
to owner in
certain cases

206 If in any case relating to the removal of goods from a warehouse without payment of duty, the person offending be an officer of Customs not acting in execution of his duty, and be prosecuted to conviction by the owner of such goods no duty shall be payable in respect

¹ For such rules see local Customs Manuals

² The original section relating to cancellation of notifications was rep by the Repealing and Amending Act 1914 (10 of 1914). The present section was ins by the Central Board of Revenue Act 1924 (4 of 1924), s 4 and Sch

³ Subs by the A O for Gazette of India

⁴ Ins by the A O

⁵ Subs by the A O for local official Gazette"

(Chapter XVIII.—Miscellaneous Schedule—Part I Part II.)

of such goods For any damage so occasioned by such officer, the
¹[Chief Customs-officer, or the Customs collector with the sanction of
 the Chief Customs officer, shall] make due compensation to such owner

²[Provided that compensation exceeding Rs 250 shall be paid with
 the sanction of the Chief Customs authority]

207 Nothing in this Act shall affect any law³ for the time being in force relating to the Commissioners for making improvements in the Port of Calcutta or the Trustees of the Port of Bombay ⁴[or any like body hereafter created for any other port]

Saving of Calcutta Port Commis- sioners' and Bombay Port Trust Acts

SCHEDULE

PART I—Rep by the Repealing Act, 1938 (I of 1938), s 2 and Sch

PART II

FORMS

A

FORM OF BOND FOR IMPORT-DUTY

(See section 92)

BOND

No 18

We, A B ,

now of

, and C D ,

of the same place, are jointly and severally bound to ⁵[the

¹ Suba by the Decentralization Act 1914 (4 of 1914) s 2 and Sch, Pt I, for Customs collector shall, with the sanction of the Chief Customs authority

² *Inf*, *ibid*

³ See the Madras Port Trust Act 1905 (Mad 2 of 1905)

the Bombay Port Trust Act 1879 (Bom 6 of 1879)

the Karachi Port Trust Act 1886 (Bom 6 of 1886),

the Chittagong Port Act 1914 (Ben 5 of 1914), and

the Calcutta Port Act 1890 (Ben 3 of 1890)

⁴ Subs by s 6 of the Excise and Sea Customs Law Amendment Act, 1885 (9 of 1885) respectively

⁵ Subs by the A O for Her Majesty's Secretary of State for India in Council *

(Schedule —Part II)

Governor General in Council (or after the establishment of the Federation of India the Governor General of India)] in the sum of Government rupees _____ to be paid to ¹[the Governor General in Council (or after the establishment of the Federation of India, the Governor General of India)] for which payment we jointly and severally bind ourselves and our legal representatives

(date)

(Signed) ()

The above bounden _____ having applied to the officer in charge of the Custom house at _____ for and obtained permission to lodge in the warehouse _____ for a period of _____ the following goods that is to say—
 imported by sea from _____ on board of the ship _____ and entered in the Custom house Books as No _____ of the Register of Goods imported by sea

The condition of this Bond is that

If the _____ or their legal representatives shall observe all the rules prescribed in the Sea Customs Act 1878 to be observed by owners of goods warehoused and by persons obtaining permission to warehouse goods under the provisions thereof

And if the said _____ or their legal representatives shall pay to the officer in charge of the Custom house at the port of _____

all dues whether customs duties warehouse dues rent or other lawful charges which shall be demandable on the said goods or on account of penalties incurred in respect to them within _____ from the date of this Bond or within such further time as the Chief Customs authority of _____ shall allow in that behalf together with interest on every such sum at the rate of six per cent per annum from the date of demand thereof being made in writing by the said officer in charge of the Custom house

And if within the term so fixed or enlarged the said goods or any portion thereof having been removed from the said warehouse for home consumption or re exportation by sea the full amount of all customs duties warehouse dues rent and other lawful charges penalties and interest demandable as aforesaid shall have been first paid on the whole of the said goods

¹ Subs. by the A. O. for the said Secretary of State in Council

3 Subs by the A O for "the said Secretary of State in Council".

(Schedule —Part II)

being the amount of duty payable at the rate of rupees per imperial gallon London proof, for gallons of (or for gallons of proof spirit used in the preparation of dozens of bottles, or gallons of cordials and liquors, as specified in the annexed schedule) manufactured at which the said have been allowed to remove thence for exportation by sea subject to the provisions of the Sea Customs Act, 1878. without having paid such duty

The condition of this obligation is that, if the above bounden , or then legal representatives, shall, at the expiration of four calendar months from the date of this obligation, pay or cause to be paid to ¹[the Governor of] duty at the rate of rupee per imperial gallon of proof spirit for all or any portion of the abovementioned which shall not have been then exported by sea to a foreign port subject to the aforesaid provisions (of which exportation, if any, due proof shall be given), or passed for local consumption on payment of duty, then this bond shall be void, otherwise the same shall remain in full force

Signed in the presence of

Place

Date

If the bond be for cordials and other liquors under section 152, add—

Schedule

Description of cordials and liquors	Quantity in bottles or gallons	Quantity of proof spirit
1	2	3

¹ Subs. by the A. O. for 'the said Secretary of State in Council

THE INDIAN ARMS ACT, 1878.

CONTENTS

PREAMBLE

I —Preliminary

SECTIONS

- 1 Short title
Local extent
Savings
- 2 Commencement
- 3 [*Repealed*]
- 4 Interpretation-clause

II —Manufacture Conversion and Sale

- 5 Unlicensed manufacture conversion and sale prohibited

III —Import, Export and Transport

- 6 Unlicensed importation and exportation prohibited
Importation and exportation of arms and ammunition for private use
- 7 Sanction of Central Government required to warehousing of arms, etc
- 8 [*Repealed*]
- 9 [*Repealed*]
- 10 Power to prohibit transport

Transshipment of arms

- 11 Power to establish searching stations
 - 12 Arrest of persons conveying arms etc under suspicious circumstances
- Procedure where arrest made by person not Magistrate or Police-officer

IV —Going armed and possessing Arms etc

- 13 Prohibition of going armed without license
- 14 Unlicensed possession of fire arms etc
- 15 Possession of arms of any description without license prohibited in certain places
- 16 In certain cases arms to be deposited at police stations or with licensed dealers

V —Licenses

SECTIONS

- 17 Power to make rules as to licenses
- 18 Cancelling and suspension of license

VI —Penalties

- 19 For breach of sections 5, 6, 10, 13 to 17
- 20 For secret breaches of sections 5, 6, 10, 14 and 15
For concealing arms, etc
- 21 For breach of license
- 22 For knowingly purchasing arms etc , from unlicensed person
For delivering arms, etc , to person not authorised to possess them
- 23 Penalty for breach of rule
- 24 Power to confiscate

VII —Miscellaneous

- 25 Search and seizure by Magistrate
- 26 Seizure and detention by Central Government
- 27 Power to exempt
- 28 Information to be given regarding offences
- 29 Sanction required to certain proceedings under section 19, clause (f)
- 30 Searches in the case of offences against section 19, clause (f),
how conducted
- 31 Operation of other laws not barred
- 32 Power to take census of fire arms
- 33 Notice and limitation of proceedings

THE FIRST SCHEDULE —[Repealed]

THE SECOND SCHEDULE —[Repealed]

ACT No XI OF 1878¹

[15th March 1878]

An Act to consolidate and amend the law relating to Arms,
Ammunition and Military Stores

WHEREAS it is expedient to consolidate and amend the law relating Preamble
to arms, ammunition and military stores, It is hereby enacted as
follows —

I — Preliminary

1 This Act may be called the Indian Arms Act 1878 and it extends Short title
to the whole of British India Local extent

¹ For the Statement of Objects and Reasons see Gazette of India 1877 Pt V
p 650 for discussions in Council see *ibid* 1877, Supplement pp 3016 and 3030 *ibid*
1878 Supplement pp 435 and 453

This Act has been declared to be in force in Panth Piploa by the Panth Piploa
Law Regulation 1929 (1 of 1929) s 2 and except s 15 in the Sinthál Parganas by
the Sinthál Parganas Settlement Regulation (3 of 1872) in the Khondmals District
by the Khondmals Law Regulation 1936 (4 of 1936) s 3 and Sch and in the Angul
District by the Angul Law Regulation 1936 (5 of 1936) s 3 and Sch

It is in force throughout the province of Assam except the Lushai Hills see Noti-
fication No 2443 T dated the 1st June 1914 Assam Gazette 1914 Pt II p 843

It has been declared by notification under s 3 (a) of the Scheduled Districts Act
1874 (14 of 1874) to be in force in the Districts of Hazaribagh Lohárdaga and
Manbhum and in Pargana Dhalbhum and the Kolhán in the District of Singhbhum,
see Gazette of India 1881 Pt I p 504 The District of Lohárdaga included at this
time the present District of Palamau which was separated in 1894 Lohárdaga is now
called the Ranchi District see Calcutta Gazette 1899 Pt I p 44

It has been extended to British Baluchistan by notification under sections 5 and 5A
of the Scheduled Districts Act 1874 with certain modifications and exceptions see p
97 of the Baluchistan Local Rules and Orders Edition 1926

Its application to the Pargana of Spiti is barred by 14 of the Spiti Pargana
1873 (1 of 1873) As to Upper Tanawal in the Hazara District see ss 3 and 6 (4) of
the Hazara (Upper Tanawal) Regulation 1900 (2 of 1900)

As to the trial in a Presidency town of offences against the Act see the Code of
Criminal Procedure 1898 (Act 5 of 1898) s 184

A license granted under the Indian Explosives Act 1884 (4 of 1884) for the manu-
facture possession sale transport or importation of an explosive may be given the
effect of a like license granted under the Indian Arms Act 1878 (11 of 1878) see Act
4 of 1884 s 15

As to the possession manufacture and export of arms ammunition and gun powder
in the Chittagong Hill Tracts see the Chittagong Hill Tracts Regulation 1900 (1 of
1900) ss 11 and 12

As to further law relating to unlawful manufacture and possession of explosive
substances see the Explosive Substances Act 1908 (6 of 1908) ss 4 (b) and 5

The Act has been amended in Bengal by the Bengal Criminal Law (Arms and Ex-
plosives) Act 1932 (Ben 21 of 1932) and the Bengal Criminal Law (Amendment)
Act 1934 (Ben 7 of 1934) and in the N W F P by the Indian Arms (N W
F P Amendment) Act 1934 (N W F P 1 of 1934)

(I—Preliminary)

Savings

But nothing herein contained shall apply to—

(a) arms, ammunition or military stores on board any sea-going vessel and forming part of her ordinary armament or equipment, or

(b) the manufacture, conversion, sale, import, export, transport, bearing or possession of arms, ammunition or military stores by order of ¹[any Government in British India], or by a public servant or ²[a member of either of the forces constituted by the Indian Territorial Force Act, 1920, or the Auxiliary Force Act, 1920] in the course of his duty ¹⁹²⁰ as such public servant or ³[member] ^{XLIX of 1920}

Commence ment

2 This Act shall come into force on such day⁴ as the ⁵[Central Government] by notification in the ⁶[Official Gazette] appoints.

3. [Repeal of enactments] Rep by the Repealing Act, 1938 (I of 1938), s 2 and Sch

Interpreta tion clause

4 In this Act, unless there be something repugnant in the subject or context,—

“cannon” includes also all howitzers, mortars, wall-pieces, mitrailleuses and other ordnance and machine guns, all parts of the same, and all carriages, platforms and appliances for mounting, transporting and serving the same

“arms” includes fire-arms, bayonets, swords, daggers, spears, spear-heads and bows and arrows, also cannon and parts of arms, and machinery for manufacturing arms

“ammunition” includes also all articles specially designed for torpedo service and submarine mining, rockets, gun cotton, dynamite, lithofracteur and other explosive or fulminating material, gun-flint, gun wads, percussion-caps, fuses and friction tubes, all parts of ammunition and all machinery for manufacturing ammunition, but does not include lead, sulphur or saltpetre

¹ Subs by the A O for ‘the Govt’

² Subs by s 35 of the Auxiliary Force Act 1920 (49 of 1920) for a Volunteer enrolled under the Indian Volunteers Act, 1869

³ Subs by s 35 *ibid* for ‘Volunteer’

⁴ 1st October 1878—see Gazette of India, 1878, Pt I, p 389

⁵ Subs by the A O for ‘G G in C’

⁶ Subs by the A O for Gazette of India

(I—Preliminary II—Manufacture, Conversion and Sale III—
Import, Export and Transport)

'military stores', in any section of this Act as applied to any part of British India, means any military stores to which the ¹[Central Government] may from time to time, by notification in the ²[Official Gazette], specially extend such section in such part, and includes also all lead, sulphur, saltpetre and other material to which the ¹[Central Government] may from time to time so extend such section

license means a license granted under this Act and licensed means holding such license

II—Manufacture Conversion and Sale

5 No person shall manufacture convert or sell or keep, offer or expose for sale, any arms, ammunition or military stores, except under a license and in the manner and to the extent permitted thereby

Unlicensed manufacture, conversion and sale prohibited

Nothing herein contained shall prevent any person from selling any arms or ammunition which he lawfully possesses for his own private use to any person who is not by any enactment for the time being in force prohibited from possessing the same but every person so selling arms or ammunition to any person other than a person entitled to possess the same by reason of an exemption under section 27 of this Act shall without unnecessary delay give to the Magistrate of the district or to the officer in charge of the nearest police station notice of the sale and of the purchaser's name and address

III—Import Export and Transport

6 No person shall bring or take by sea or by land into or out of British India any arms, ammunition or military stores except under a license and in the manner and to the extent permitted by such license

Unlicensed importation and exportation prohibited

Nothing in the first clause of this section extends to arms (other than cannon) or ammunition imported or exported in reasonable quantities for his own private use by any person lawfully entitled to possess such arms or ammunition but the Collector of Customs or any other officer empowered by the ³[Central Government] in this behalf by name or in virtue of his office may at any time detain such arms or ammunition until he receives the orders of the ³[Central Government] thereon

Importation and exportation of arms and ammunition for private use

Explanation—Arms, ammunition and military stores taken from one part of British India to another by sea or across intervening territory not being part of British India are taken out of and brought into British India within the meaning of this section

¹ Subs by the A O for G G in C

² Subs by the A O for Gazette of India

³ Subs by the A O for L G

(III —Import, Export and Transport)

Sanction of
Central Gov
ernment
required to
warehousing
of arms, etc

7 Notwithstanding anything contained in the Sea Customs Act, VIII of 1878, no arms, ammunition or military stores shall be deposited in any warehouse licensed under section 16 of that Act without the sanction of the ¹[Central Government]

8 [*Levy of duties on arms, etc , imported by sea*] Rep. by the Amending Act, 1891 (XII of 1891)

9 [*Power to impose duty on import by land*] Rep by the Amending Act, 1891 (XII of 1891)

Power to
prohibit
transport

10 The ²[Central Government] may, from time to time, by notification in the ³[Official Gazette],—

(a) regulate or prohibit the transport of any description of arms, ammunition or military stores over the whole of British India or any part thereof, either altogether or except under a license and to the extent in the manner permitted by such license, and

(b) cancel any such notification

Explanation—Arms, ammunition or military stores transhipped at a port in British India are transported within the meaning of this section

Tranship
ment of
arms

Power to
establish
searching
stations.

11 The ¹[Central Government] * * * *
may, at any places along the boundary line between British India and foreign territory, and at such distance within such line as it deems expedient, establish searching-posts at which all vessels, carts and baggage animals, and all boxes, bales and packages in transit, may be stopped and searched for arms, ammunition and military stores by any officer empowered by ⁵[the Central Government] in this behalf by name or in virtue of his office

Arrest of
persons
conveying
arms, etc ,
under
suspicious
circum
stances

12 When any person is found carrying or conveying any arms, ammunition or military stores, whether covered by a license or not, in such manner or under such circumstances as to afford just grounds of suspicion that the same are being carried by him with intent to use them, or that the same may be used, for any unlawful purpose, any person may without warrant apprehend him and take such arms, ammunition or military stores from him

¹ Subs by the A O for ' L G '

² Subs by the A O for ' G G in C ''

³ Subs by the A. O for ' Gazette of India '.

⁴ The words "with the previous sanction of the G G in C ' rep by the A O

⁵ Subs by the A O for 'such Govt '

(III —Import, Export and Transport IV —Going armed and possessing Arms, etc)

Any person so apprehended and any arms ammunition or military stores so taken by a person not being a Magistrate or Police officer, shall be delivered over as soon as possible to a Police officer

Procedure where arrest made by person not Magistrate or Police officer

All persons apprehended by or delivered to a Police officer and all arms and ammunition seized by or delivered to any such officer under this section shall be taken without unnecessary delay before a Magistrate

II —Going armed and possessing arms etc

13 No person shall go armed with any arms except under a license and to the extent and in the manner permitted thereby

Prohibition of going armed without license

Any person so going armed without a license or in contravention of its provisions may be disarmed by any Magistrate Police officer or other person empowered by the ¹[Central Government] in this behalf by name or by virtue of his office

14 No person shall have in his possession or under his control any cannon or fire arms or any ammunition or military stores except under a license and in the manner and to the extent permitted thereby

Unlicensed possession of fire-arms etc

2*

*

*

*

15 In any place to which section 32 clause 2 of Act No XXXI of 1860³ applies at the time this Act comes into force or to which ⁴[the Central Government] may by notification in the ⁵[Official Gazette] specially extend this section⁶ no person shall have in his possession any arms of any description except under a license and in the manner and to the extent permitted thereby

Possession of arms of any description without license prohibited in certain places

⁷[16 (1) Any person possessing arms ammunition or military stores the possession whereof has in consequence of the cancellation or expiry

In certain cases arms to be

¹ Subs by the A O for L G

² The last three paras of s 14 were rep by the Amending Act 1891 (12 of 1891)

³ Act 31 of 1860 was rep by s 3 of this Act

⁴ Subs by the A O for the L G with the previous sanction of the G G in C

⁵ Subs by the A O for local official Gazette

⁶ S 15 has been especially extended to—

(1) Places in Bombay see Bom R and O

(2) Places in Madras see Mad R and O

(3) Places in the Punjab see Punjab Gazette 1899 Pt I p 235 *et seq* 1900 Pt I p 810

(4) Places in the U P see U P R and O

(5) Places in Assam see Assam Gazette Extra dated 23rd March 1923

⁷ Subs by s 2 of the Indian Arms (Amendment) Act 1919 (20 of 1919) for the original section

(IV —Going armed and possessing Arms, etc V —Licenses)

deposited
at police
stations or
with
licensed
dealers

of a license or of an exemption or by the issue of a notification under section 15 or otherwise, become unlawful, shall without unnecessary delay deposit the same either with the officer in charge of the nearest police-station or, at his option and subject to such conditions as the ¹[Central Government] may by rule prescribe, with a licensed dealer

(2) When arms, ammunition or military stores have been deposited under sub-section (1) or before the first day of January, 1920, under the provisions of any law for the time being in force, the depositor shall, at any time before the expiry of such period as the ¹[Central Government] may by rule prescribe, be entitled—

- (a) to receive back any thing so deposited the possession of which by him has become lawful, and
- (b) to dispose, or authorize the disposal, of any thing so deposited by sale or otherwise to any person whose possession of the same would be lawful, and to receive the proceeds of any such sale

Provided that nothing in this sub-section shall be deemed to authorize the return or disposal of any thing the confiscation of which has been directed under section 24

(3) All things deposited as aforesaid and not returned or disposed of under sub-section (2) within the prescribed period therein referred to shall be forfeited to His Majesty

(4) (a) The ¹[Central Government] may make rules consistent with this Act for carrying into effect the provisions of this section

(b) In particular and without prejudice to the generality of the foregoing provision, the ¹[Central Government] may by rule prescribe—

- (i) the conditions subject to which arms, ammunition and military stores may be deposited with a licensed dealer, and
- (ii) the period after the expiry of which things deposited as aforesaid shall be forfeited under sub section (3)]

V —Licenses

Power to
make rules
as to
licenses

17. The ²[Central Government] may from time to time, by notification in the ³[Official Gazette], make rules to determine the officers

¹ Subs by the A O for 'L G'

² Subs by the A O for 'G G in C'

³ Subs by the A O for 'Gazette of India'

(V.—*Licenses.*)

by whom the form in which, and the terms and conditions on and subject to which, any license shall be granted¹; and may by such rules among other matters—

- (a) fix the period for which such license shall continue in force;
- (b) fix a fee payable by stamp or otherwise in respect of any such license granted in a place to which section 32, clause 2. of Act No. XXXI of 1860² applies at the time this Act comes into force or in respect of any such license other than a license for possession granted in any other place,
- (c) direct that the holder of any such license other than a license for possession shall keep a record or account, in such form as the ³[Central Government] may prescribe, of anything done under such license, and exhibit such record or account when called upon by an officer of Government to do so;
- (d) empower any officer of Government to enter and inspect any premises in which arms, ammunition or military stores are manufactured or kept by any person holding a license of the description referred to in section 5 or section 6,
- (e) direct that any such person shall exhibit the entire stock of arms, ammunition and military stores in his possession or under his control to any officer of Government so empowered; and
- (f) require the person holding any license or acting under any license to produce the same, and to produce or account for the arms, ammunition or military stores covered by the same when called upon by an officer of Government so to do

18. Any license may be cancelled or suspended—

- (a) by the officer by whom the same was granted, or by any authority to which he may be subordinate or by any Magistrate of a district, or Commissioner of Police in a presidency-town, within the local limits of whose jurisdiction the holder of such license may be, when for reasons to be recorded in writing, such officer, authority, Magistrate or Commissioner deems it necessary for the security of the public peace to cancel or suspend such license, or

Cancelling
and suspension of
license

¹ For Rules as to licenses, see the Indian Arms Rules, 1924, Genl. R. & O., Vol II

² Act 31 of 1860 was rep. by s. 3 of this Act

³ Subs. by the A O for "L G".

(V—Licenses VI—Penalties)

(b) by any Judge or Magistrate before whom the holder of such license is convicted of an offence against this Act, or against the rules made under this Act, and

¹[the Central Government may by a notification in the Official Gazette cancel or suspend all or any licenses throughout the whole or any portion of British India]

VI—Penalties

For breach
of sections 5
6 10 13 to
17

219 Whoever commits any of the following offences (namely) —

- (a) manufactures, converts or sells, or keeps, offers or exposes for sale, any arms, ammunition or military stores in contravention of the provisions of section 5,
- (b) fails to give notice as required by the same section,
- (c) imports or exports any arms, ammunition or military stores in contravention of the provisions of section 6,
- (d) transports any arms, ammunition or military stores in contravention of a regulation or prohibition issued under section 10,
- (e) goes armed in contravention of the provisions of section 13,
- (f) has in his possession or under his control any arms, ammunition or military stores in contravention of the provisions of section 14 or section 15,
- (g) intentionally makes any false entry in a record or account which, by a rule made under section 17, clause (c), he is required to keep,
- (h) intentionally fails to exhibit anything which, by a rule made under section 17, clause (c), he is required to exhibit, or
- (i) fails to deposit arms, ammunition or military stores, as required by section 14 or section 16,

shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both ³

¹ Subs by the A O for the L G may at its discretion, by a notification in the local official Gazette, cancel or suspend all or any licenses throughout the whole or any portion of the territories under its administration

² Offences under this section are bailable, see Schedule II, Code of Criminal Procedure, 1893 (Act 5 of 1893)

³ After this section a new s 19 A prescribing a heavier penalty for offences under cl. (a), (c), (e) or (f) of s 19 in respect of certain arms, has been inserted in Bengal. See the Bengal Criminal Law (Arms and Explosives) Act, 1932 (Ben 21 of 1932), s 3 and the Bengal Criminal Law Amendment Act, 1934 (Ben 7 of 1934) s 3

(VI —Penalties)

20 Whoever does any act mentioned in clause (a), (c), (d) or (f) of section 19, in such manner as to indicate an intention that such act may not be known to any public servant as defined in the Indian Penal Code, or to any person employed upon a railway or to the servant of any public carrier,

For secret breaches of sections 5 6 10 14 and 15

and whoever, on any search being made under section 25, conceals or attempts to conceal any arms, ammunition or military stores,

For conceal ing arms, etc

shall be punished with imprisonment for a term which may extend to seven years, or with fine or with both¹

21. Whoever, in violation of a condition subject to which a license has been granted, does or omits to do any act shall, when the doing or omitting to do such act is not punishable under section 19 or section 20, be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both

For breach of license

22 Whoever knowingly purchases any arms ammunition or military stores from any person not licensed or authorized under the proviso to section 5 to sell the same or

For knowingly purchasing arms etc, from un licensed person.

delivers any arms ammunition or military stores into the possession of any person without previously ascertaining that such person is legally authorized to possess the same

For delivering arms, etc to person not authorized to possess them

shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both

23 Any person violating any rule made under this Act and for the violation of which no penalty is provided by this Act shall be punished with imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both

Penalty for breach of rule

24 When any person is convicted of an offence punishable under this Act, committed by him in respect of any arms, ammunition or military stores, it shall be in the discretion of the convicting Court or Magistrate further to direct that the whole or any portion of such arms, ammunition or military stores, and any vessel, cart or baggage animal used to convey the same, and any box, package or bale in which the same may have been concealed, together with the other contents of such box, package or bale, shall be confiscated

Power to confiscate

¹ A proviso prescribing a heavier penalty for offences under this section in respect of certain arms has been inserted in Bengal, see Ben Act 21 of 1932 s 4 After this section a new s 20A prescribing heavier penalty in certain cases has been inserted in Bengal see Ben Act 7 of 1934 s 4

(VII — Miscellaneous)

VII — Miscellaneous

Search and
seizure by
Magistrate

25 Whenever any Magistrate has reason to believe that any person residing within the local limits of his jurisdiction has in his possession any arms, ammunition or military stores for any unlawful purpose,

or that such person cannot be left in the possession of any such arms, ammunition or military stores without danger to the public peace,

such Magistrate having first recorded the grounds of his belief, may cause a search to be made of the house or premises occupied by such person or in which such Magistrate has reason to believe such arms, ammunition or military stores are or is to be found, and may seize and detain the same although covered by a license in safe custody for such time as he thinks necessary

The search in such case shall be conducted by or in the presence of, a Magistrate, or by, or in the presence of, some officer specially empowered in this behalf by name or in virtue of his office by the ¹[Central Government]

Seizure and
detention
by Central
Government

26 The ¹[Central Government] may at any time order or cause to be seized any arms ammunition or military stores in the possession of any person notwithstanding that such person is licensed to possess the same, and may detain the same for such time as it thinks necessary for the public safety

Power to
exempt

27 The ²[Central Government] may from time to time, by notification³ published in the ⁴[Official Gazette],—

(a) exempt any person by name or in virtue of his office, or any class of persons, or exclude any description of arms or ammunition, or withdraw any part of British India, from the operation of any prohibition or direction contained in this Act, and

(b) cancel any such notification, and again subject the persons or things or the part of British India comprised therein to the operation of such prohibition or direction ⁵

¹ Subs by the A O for L G

² Subs by the A O for G G in C

of

may
tion

³ see rule 3 and Schedules I to IV
1 II
being Europeans from payment of
their own authorities see Notifica

⁴ Subs by the A O for Gazette of India

⁵ For notification declaring arms etc brought into an Indian port and declared under manifest to be consignments without transhipment to any port on the seaboard of the Persian Gulf to be liable to the prohibitions and directions contained in s 6 see No 902 P dated 27th April 1904 Gazette of India 1904 Pt I p 296 As to exemption of small parcels under certain conditions or of arms etc exported under license and in transit at an intermediate port see *ibid*

(VII—Miscellaneous)

23 Every person aware of the commission of any offence punishable under this Act shall, in the absence of reasonable excuse, the burden of proving which shall lie upon such person, give information of the same to the nearest Police officer or Magistrate, and

Information to be given regarding offences.

every person employed upon any railway or by any public carrier shall, in the absence of reasonable excuse the burden of proving which shall lie upon such person give information to the nearest Police officer regarding any box, package or bale in transit which he may have reason to suspect contains arms ammunition or military stores in respect of which an offence against this Act has been or is being committed

29 Where an offence punishable under section 19, clause (f) has been committed within three months from the date² on which this Act comes into force in any province, district or place to which section 32, clause 2 of Act XXXI of 1860³ applies at such date or where such an offence has been committed in any part of British India not being such a district, province or place no proceedings shall be instituted against any person in respect of such offence without the previous sanction of the Magistrate of the district or, in a presidency town of the Commissioner of Police

Sanction required to certain proceedings under section 19, clause (f)

30 Where a search is to be made under the Code of Criminal Procedure⁴ or the Presidency Magistrates Act 1877⁴, in the course of any proceedings instituted in respect of an offence punishable under section 19 clause (f), such search shall notwithstanding anything contained in the said Code or Act be made in the presence of some officer specially appointed by name or in virtue of his office by the [Central Government] in this behalf and not otherwise

Searches in the case of offences against section 19 clause (f) how conducted

31 Nothing in this Act shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Act or the rules made under it, or

Operation of other laws not barred

¹ This section has been rep in its application to the N W F P by the Indian Arms (N W F P Amendment) Act 1934 (N W F P 1 of 1934)

² The 1st October 1878

³ Act 31 of 1860 was rep by s 3 of this Act

⁴ See now the Code of Criminal Procedure, 1898 (5 of 1898)

⁵ Subs by the A O for L G

(VII—Miscellaneous Schedules)

from being liable under such other law to any higher punishment or penalty than that provided by this Act. Provided that no person shall be punished twice for the same offence

Power to
take census
of fire arms

32 The ¹[Central Government] may from time to time, by notification in the ²[Official Gazette], direct a census to be taken of all fire arms in any local area, and empower any person by name or in virtue of his office to take such census

On the issue of any such notification, all persons possessing any such arms in such area shall furnish to the person so empowered such information as he may require in reference thereto, and shall produce such arms to him if he so requires

Any person refusing or neglecting to produce any such arms when so required shall be punished with imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees or with both

Notice and
limitation of
proceedings

33 No proceeding other than a suit shall be commenced against any person for anything done in pursuance of this Act, without having given him at least one month's previous notice in writing of the intended proceeding and of the cause thereof, nor after the expiration of three months from the accrual of such cause

THE FIRST SCHEDULE —[Enactments repealed] Rep by the Repealing Act, 1938 (I of 1938), s 2 and Sch

THE SECOND SCHEDULE —[Arms, etc, liable to Duty] Rep by the Amending Act, 1891 (VII of 1891)

¹ Subs by the A O for 'L G'

² Subs by the A O for local official Gazette

[THE PUNJAB LAWS (AMENDMENT) ACT, 1878.]

ACT No XII OF 1878

[28th March, 1878.]

An Act for the further Amendment of the Punjab Laws Act,
1872

For the purpose of further amending the Punjab Laws Act, 1872; Preamble
It is hereby enacted as follows —

1 to 6. *Repealed*²

³⁷ Whoever breaks any rule made by the ⁴[Provincial Government] under the same Act shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to fifty rupees, or with both ^{6*} * * * Penalty for breach of rules under Act IV of 1872

8. [Recovery of advances made by Government] Rep by the Amending Act, 1903 (I of 1903), s 4 and Sch III

THE HUSAINABAD ENDOWMENT ACT, 1878

ACT No XV OF 1878.⁷

[5th September, 1878]

An Act to make better provision for the management of the
Husainabad endowment at Lucknow

Whereas in the year 1838 the third King of Oudh Muhammad Ali Shah, built at Lucknow a Mosque called Husainabad Mubarak for the purpose of the celebration therein of certain religious ceremonies and for the ultimate interment of himself and his mother;

¹ Short title given by the Amending Act, 1903 (I of 1903). For Statement of Objects and Reasons, see Gazette of India 1877, Pt V p 489 for Proceedings in Council, see *ibid*, Supplement, pp 2702, 2769 and *ibid* 1878 p 481

² Ss 1 and 5 have been rep by the Repealing Act, 1938 (1 of 1938), s 2 by the Punjab Pre-emption Act, 1905 (Punjab 2 of 1905), ss 3 and 4 by the Punjab Court of Wards Act, 1903 (Punjab 2 of 1903), and s 6 by the Amending Act, 1891 (12 of 1891)

³ S 7 has been rep in the N W F P by the N W F P Law and Justice Regulation, 1901 (7 of 1901), s 5 and Sch III

⁴ Subs by the A O for L G "

⁵ I.e the Punjab Laws Act, 1872 (4 of 1872)

⁶ The second sentence of s 7 was rep by the Amending Act, 1891 (12 of 1891), s 2 and Sch. I

⁷ For Statement of Objects and Reasons, see Gazette of India, 1878, Pt V, p 25 and for Proceedings in Council, see *ibid*, Supplement pp 1490 to 1492

And whereas, on or about the twenty third day of November 1839 the said Muhammad Ali Shah deposited the sum of twelve lakhs of Rucl now sicca rupees in the treasury of the late East India Company at the Residency at Lucknow,

And whereas by a deed of gift dated the 10th of the month of Ramazan in the year 1255 of the Hiyri, corresponding with the said twenty third day of November 1839, the said Muhammad Ali Shah declared that the annual interest on the said sum of twelve lakhs of rupees at the rate of four per centum per annum, together with the rent of certain shops therein referred to and the income of certain religious offerings should be applied to the payment of the pensions of certain persons therein mentioned and their descendants (hereinafter called the pensioners) and to defraying the expenses of the said Mosque and the repairs of a road therein mentioned, and by the same deed the said Muhammad Ali Shah appointed two of his servants named Rafik ud Daulah Sayyid Imam Ali Khan Bahadur and Azimullah Khan Bahadur, and after them their descendants generation after generation to be Superintendents (*mutawalis*) of the said Mosque and Sharf ud Daulah Muzaffar ul Mulk Muhammad Ibrahim Khan Bahadur Mustakim Jang and his descendants after him, to be Agent of the pensioners only, and the expenses of the said Mosque were to be paid in perpetuity from the said treasury to the said two Superintendents and their descendants after them and the said pensions were to be paid through the said Agent and the said deed further provided that in the event of failure of heirs of the said Superintendents or Agent the British Resident for the time being at Lucknow should with the concurrence of three fourths of the pensioners appoint one of their number to the vacant post And the deed now in recital also contained the following provisions —

As the pensioners enumerated in this deed are objects of our peculiar consideration and favour it is necessary that the Resident for the time being owing to the union and friendship subsisting between the two Governments treat them with kindness and considering them deserving of the support of the British Government always afford them his aid and assistance

The undermentioned items of income are hereby remitted and shall be devoted to the expenses of the Husainabad Mubarrat and its dependencies and all the property in it is given by us as a gift It shall not be optional with the sovereigns of Oudh at any time on any account whatsoever to interfere in any way with it and let the Resident for the time being at the request of the *mutawalis* or Superintendents in this particular matter give his countenance and support that this good work may continue in existence for ever,

And whereas the items of income so referred to were the rents of certain shops attached to the said Mosque and the income from religious offerings thereto;

And whereas, on the fifth day of December 1839, Colonel Caulfield, the British Resident at Lucknow, addressed a letter to the said Muhammad Ali Shah in which he acknowledged the receipt of the said deed of gift, and stated that His Majesty might rest satisfied that every attention would be paid by the Resident to the wishes therein expressed, that his relatives would ever meet with the utmost attention, and that their interests would always be attended to by the Resident so far as his official duty permitted,

And whereas, some time after the said twenty third day of November 1839, the said Muhammad Ali Shah added to the endowment so created Government promissory notes amounting to the sum of two millions four hundred and seventeen thousand five hundred sicca rupees, but he did not expressly declare any trusts of such further endowment,

And whereas the said notes are believed to have been in September 1841 converted into Government promissory notes for Company's rupees and to have been then endorsed in favour of the said Superintendents and the Agent

And whereas, at some time between the same date and the month of February 1856, certain surplus funds of the said endowment were invested in Government promissory notes, some in the names of the said Superintendents and Agent, and some in the names of the said Superintendents only,

And whereas, after the mutiny of 1857 and the re occupation of Lucknow, the said Mosque was found to have been stripped of all its valuable property, and the promissory notes of which the said endowment then consisted were missing and it appeared on enquiry that the said Agent had joined the mutineers and been killed during an attack on the said city, and that the said Superintendents had sold certain of the same promissory notes,

And whereas the Government of India thereupon removed the existing Superintendents from their office, and called upon the existing pensioners to appoint under the heretofore recited provisions of the fourth article of the said deed of gift two other Superintendents and an Agent,

And whereas the Nawabs Muhsin ud Daulah and Mumtaz ud Daulah were accordingly appointed Superintendents, and Shahamatullah Khan was appointed Agent, and such appointments were confirmed by the then Chief Commissioner of Oudh in the year 1860;

And whereas in the meanwhile most of the promissory notes so missing as aforesaid were recovered, and of some of the others duplicates were granted by Government,

And whereas the Superintendents and Agent appointed as last aforesaid subsequently obtained from the Civil Court at Lucknow a declaration of their title to the arrears of interest which had accrued due on the promissory notes then constituting the said endowment,

And whereas, in the month of June 1864 the said promissory notes and arrears were assigned to the said Superintendents and Agent free from all restrictions,

And whereas the said Nawab Muhsin ud Daulah has recently died, but the said deed of gift confers no power to appoint any other person to be a Superintendent in his stead,

And whereas it is doubtful whether the aforesaid appointment of Superintendents and Agent was a regular and valid appointment, and whether there exists any person who can exercise the power of appointment conferred on the Resident by the said deed of gift,

And whereas, owing to the changes which have happened since the death of the said Muhammad Ali Shah, it is expedient to provide for the management of the said endowment in manner hereinafter appearing,

And whereas it is also expedient to indemnify all persons for anything done before the passing of this Act which might lawfully have been done if the said appointments of the said Nawabs and Shahamat ullah Khan had been valid,

It is hereby enacted as follows —

1 The ¹[Provincial Government] may call upon the pensioners and such of the descendants of the said Muhammad Ali Shah as may for the time being reside at Lucknow to nominate so many persons, not less than six in number, as they or a majority of them think fit, to be trustees of the said endowment, and may appoint three of the persons so nominated to be such trustees

Provided that the said Nawab Mumtaz ud Daulah shall be one of the persons nominated and appointed as aforesaid

2. If any of the said trustees dies, or is desirous of being discharged, or refuses or becomes incapable to act, or is declared an insolvent, or is guilty of any misconduct which in the opinion of the ¹[Provincial Government] disqualifies him to be a trustee, then and so often the ¹[Provincial Government] may call upon the pensioners and such descendants to nominate so many persons, not less than two in number, as they

Power to
appoint trustees of
endowment

Power to
appoint in
place of
trustees
dying etc.

or a majority of them think fit, to be trustees of the said endowment, and may appoint one of the persons so nominated to be a trustee in the stead of the trustee so dying or desiring to be discharged, or refusing or becoming incapable to act, or declared an insolvent, or deemed disqualified.

3 If the pensioners and such descendants, on being called upon under section one or section two to nominate, fail to do so within one month from the date on which they are so called upon, the ¹[Provincial Government] may (except as provided in respect of the said Nawab Mumtaz ud-Daulah in section one) appoint such persons as it thinks fit to be trustees of the said endowment. Provided that the number of the trustees shall not in the whole exceed three. Appointment in default of nomination

4 The appointment of trustees under this Act shall be effected by a notification in the ²[Official Gazette], and the appointee shall become a trustee on the date fixed in the notification, or if no date is fixed, from the day after its appearance in such Gazette. Notification of appointment of trustees

5 The validity of any such appointment so notified shall not be questioned in any Court of Justice. Validity of such appointment

6 After the first appointment of trustees under this Act, the whole property of the endowment shall, for the purposes of the endowment, always be vested in the whole body of trustees for the time being. Devolution of property

7 The trustees for the time being under this Act shall, for the purposes of the endowment, have the entire management of the property and affairs of the endowment, and shall be responsible for the due conduct of such affairs. Management

In the event of any difference of opinion among the trustees, the decision of the majority of them shall prevail, and such majority may, on behalf of themselves and their co trustee, execute all such assurances as may be requisite for carrying into effect any lease or other disposition of any property of the endowment.

8 With the previous sanction of the ¹[Provincial Government], the said trustees may from time to time appoint some person, not being one of their own body, to act as their Secretary, to keep their accounts, conduct their correspondence and perform other ministerial duties, and may suspend or dismiss any person so appointed. Trustees to appoint Secretary

Every person so appointed shall, so long as he continues to act as Secretary, be entitled to receive from the trustees such salary not less than one hundred rupees per mensem as the trustees, with the previous sanction of the ¹[Provincial Government], may direct.

¹ Subs. by the A. O. for "L. G."

² Subs. by the A. O. for 'local official Gazette'.

Power of Government to appoint in certain cases

9 If the said trustees, on being called upon by the ¹[Provincial Government], when the office of Secretary is vacant, to nominate a Secretary under section eight, fail to do so within one month from the date on which they are so called upon, the ¹[Provincial Government] may appoint such person as it thinks fit to be Secretary, and every person so appointed shall, so long as he continues to act as Secretary, be entitled to receive from the trustees such salary as the ¹[Provincial Government] may direct

Power of Government to dismiss Secretary

10 The ¹[Provincial Government] may in its discretion dismiss any Secretary appointed under section eight or section nine who is guilty of any misconduct which, in the opinion of the ¹[Provincial Government], disqualifies him to be Secretary

Receipts of trustees

11 The receipts of the said trustees for any monies or securities which may be paid or transferred to them in pursuance of this Act or the trusts thereof shall discharge the person paying or transferring the same therefrom and from being concerned to see to the application thereof, or being accountable for the non application or misapplication thereof

Indemnity of trustees

12 The said trustees shall be chargeable only with such monies and securities as they respectively actually receive, and shall not be answerable the one for the other of them, nor for any banker broker or other person in whose hands any of the property of the endowment may be placed, nor for the insufficiency or deficiency of any securities, nor otherwise for any loss or misapplication of the said property, unless the same is occasioned by or through their own wilful neglect or default; and they may reimburse themselves out of the said property all expenses properly incurred in or about the execution of their trust

Power to call for accounts and information

13 The ¹[Provincial Government] may from time to time require the said trustees to render such accounts and other information respecting the said endowment as it thinks fit and any trustee failing to comply with such requisition or furnishing false information respecting such endowment, shall be deemed to have committed an offence under section 175, section 176 or section 177 (as the case may be) of the Indian Penal Code

Indemnity clause

14 All officers and other persons are hereby indemnified for any thing done before the passing of this Act which might lawfully have been done if the hereinbefore recited appointments of the said Nawabs and Shahmatullah Khan had been valid, and no suit or other proceeding shall be maintained against any such officer or other person in respect of anything so done

THE NORTHERN INDIA FERRIES ACT, 1878

CONTENTS.

PREAMBLE

I — PRELIMINARY

SECTIONS

- 1 Short title
- Local extent
- Commencement
- 2 [*Repealed*]
- 3 Interpretation clause

II — PUBLIC FERRIES

- 4 Power to declare, establish define and discontinue public ferries
- 5 Claims for compensation
- 6 Superintendence of public ferries
- 7 Management may be vested in municipality
- 7A Management may be vested in District Council or District or Local Board
- 8 Letting ferry tolls by auction
- 9 Recovery of arrears from lessee
- 10 Power to cancel lease
- 11 Surrender of lease
- 12 Power to make rules
- 13 Private ferry not to ply within two miles of public ferry without sanction
- 14 Person using approach etc., liable to pay toll

SECTIONS

15 Tolls

16 Table of tolls

List of tolls

17 Tolls, rents, compensation and fines are to form part of revenues of Province

18 Compounding for tolls

III —PRIVATE FERRIES

19 Power to make rules

20 Tolls

IV —PENALTIES AND CRIMINAL PROCEDURE

21 Penalty for breach of provisions as to table of tolls, list of tolls and return of traffic

22 Penalty for taking unauthorised toll, and for causing delay

23 Penalty for breach of rules made under sections 12 and 19

24 Cancellation of lease on default or breach of rules

25 Penalties on passengers offending

26 Penalty for maintaining private ferry within prohibited limits.

27 Fines payable to lessee

28 Penalty for rash navigation and stacking of timber

29 Power to arrest without warrant

30 Power to try summarily

31 Magistrate may assess damage done by offender

V —MISCELLANEOUS

32 Power to take possession of boats etc , on surrender or cancellation of lease

33 Similar power in cases of emergency

34 Jurisdiction of Civil Courts barred

35 Delegation of powers

36 [*Repealed*]

(I—Preliminary)

ACT No XVII of 1878.¹

[9th November 1878.]

An Act to regulate Ferries in Northern India

WHEREAS it is expedient to regulate ferries in the Punjab, the Preamble
North Western Provinces Oudh Central Provinces, Assam, and Ajmer
and Merwara It is hereby enacted as follows —

I—PRELIMINARY

1 This Act may be called the Northern India Ferries Act 1878 Short title

It extends only to the ²territories respectively administered by the Local extent
Lieutenant Governors of the Punjab and the North Western Provinces
and the Chief Commissioners of Oudh the Central Provinces Assam
and Ajmer and Merwara

It shall come into force in each of the said territories on such date³ Commence
as the ⁴[Provincial Government] may by notification in the Official ment
Gazette, fix in this behalf

2 [Repeal] Rep by the Repealing Act 1938 (I of 1938) s 2
and Sch

3 In this Act the word ferry includes also a bridge of boats, Interpretation clause
pontoons or rafts a swing bridge a flying bridge and a temporary
bridge and the approach to and landing places of a ferry

¹ For Statement of Objects and Reasons see Gazette of India 1878 Pt V p 135
for Preliminary Report of the Select Committee see *ibid* p 210 for Proceedings in
Council see *ibid* Supplement pp 265 325 1104 and 1194

² At present corresponds to the Punjab the N W F P the U P the C P
Assam and Ajmer Merwara

³ The Act was brought into force in—

The Punjab on 1st April 1881 see Punjab Gazette Pt I p 139

The U P on 1st January 1879 see North Western Provinces and Oudh
Gazette 1878 Pt I p 2035

Assam on 1st April 1879 see Assam Gazette 1879 Pt I p 187

⁴ Subs by the A O for L G

(1) — Power of Government

II — PUBLIC FERRY

Proviso
declares
that in
cases and
cases of
public
ferries

4 The [Provincial Government] may from time to time—

(a) declare any river or lake to be a public ferry and the
provisions of this Act shall apply to such river or lake as if it
were a public ferry; and

(b) declare any river or lake to be a public
ferry;

(c) declare any river or lake to be a public
ferry;

(d) declare the limit of any public ferry—

(e) declare the extent of any public ferry, and

(f) declare any public ferry when it seems unnecessary.

Every such declaration, establishment, declaration of change or alteration
shall be made by notification in the Official Gazette.

3 [Provided that, when a river lies between two provinces, the powers
conferred by this section shall in respect of such river be exercised
jointly by the [Provincial Government] of those provinces by notification
in their respective Official Gazettes * * *]

Provided also that, when an alteration in the course or in the limit
of a public ferry is rendered necessary by changes in the river, such
alteration may be made, by an order under his hand by the Commis-
sioner of the Division in which such ferry is situate, or by such other
officer as the [Provincial Government] may from time to time appoint
by name or in virtue of his office in that behalf.

5 Claims for compensation for any loss sustained by any person in
consequence of a private ferry being taken possession of under section
4 shall be inquired into by the Magistrate of the district in which such
ferry is situate or such officer as he appoints in that behalf and sub-
mitted for the consideration and orders of the [Provincial Govern-
ment].

1 Subs. by the A. O. for L. G.

2 For such declarations etc. see different local rules and orders.

3 Subs. by the Devolution Act 1930 (33 of 1930) for the original proviso.

4 Subs. by the A. O. for Local Governments.

5 The words "and in any case where the said Local Government's fail to agree as
regards the exercise of any such power they shall exercise such power subject to the
control of the L. G. in C." rep. by the A. O.

6 In the N. W. F. P. references to Commissioner or Commissioners of a District
are to be construed as referring to the Revenue Commissioner. See the N. W. F. P.
Law and Justice Regulation 1901 (7 of 1901) s. 6 (1) (f).

Claims for
compensation
for loss

(II—Public Ferries)

6 The immediate superintendence of every public ferry shall, except as provided in section 7¹ [and section 7A], be vested in the Magistrate of the district in which such ferry is situate, or in such other officer as the 2[Provincial Government] may, from time to time, appoint by name or in virtue of his office in this behalf,³

Superintendence of public ferries

and such Magistrate or officer shall, except when the tolls at such ferry are leased, make all necessary arrangements for the supply of boats for such ferry, and for the collection of the authorised tolls leviable thereat

7 The 2[Provincial Government] may direct that any public ferry situate within the limits of a town be managed by the officer or public body charged with the superintendence of the municipal arrangements of such town,

Management may be vested in municipality

⁴[and thereupon that ferry shall be managed accordingly]

5[7A. The Provincial Government may direct that any public ferry, wholly or partly within the area subject to the authority of a District Council or a District Board or a Local Board in the Province be managed by that Council or Board and thereupon that ferry shall be managed accordingly]

Management may be vested in District Council or District or Local Board

7[8 The tolls of any public ferry may from time to time be let by public auction for a term not exceeding five years with the approval of the 8Commissioner or by public auction or otherwise than by public auction, for any term with the previous sanction of the 2[Provincial Government]

Letting ferry tolls by auction

¹ Ins in the application of the Act to—

The U P by the U P Local Boards Act 1883 (14 of 1883) s 65

The Punjab by the Punjab District Boards Act 1883 (20 of 1883) s 79

The C P by the C P Local Self Government Act 1883 (1 of 1883) s 44 and

Assam by the Assam Local Self Government (Amendment) Act 1906 (Assam 8 of 1906) s 43

The words are not applicable to Ajmer Merwara

² Subs by the A O for L G

³ For notifications as to the superintendence of ferries in the Punjab and the U P see the respective local Rules and Orders

⁴ Subs by the A O for the following words —

and may further direct that all or any part of the proceeds from a ferry

be paid into the municipal fund of such town

and thereupon such ferry shall be managed and such proceeds as may be

shall be paid accordingly

⁵ Subs by the A O for s 7A inserted by the Acts mentioned in foot 1
The section is inapplicable to Ajmer Merwara

⁶ For notifications vesting the management of certain ferries in the District Councils of the Punjab and U P R and O

⁷ Subs for original s 8 by the Northern India Ferries Act 1906 (3 of 1906) s 1

⁸ See foot note 6 below s 4 supra

(II —Public Ferries)

The lessee shall conform to the rules made under this Act for the management and control of the ferry, and may be called upon by the officer in whom the immediate superintendence of the ferry is vested, or, if the ferry is managed by a municipal or other public body under section 7¹ or section 7A, then by that body, to give such security for his good conduct and for the punctual payment of the rent as the officer or body, as the case may be, thinks fit.

When the tolls are put up to public auction, the said officer or body as the case may be or the officer conducting the sale on his or its behalf may for reasons recorded in writing refuse to accept the offer of the highest bidder, and may accept any other bid or may withdraw the tolls from auction.]

Recovery of
arrears from
lessee

9 All arrears due by the lessee of the tolls of a public ferry on account of his lease may be recovered from the lessee or his surety (if any) by the Magistrate of the district in which such ferry is situate as if they were arrears of land revenue.

Power to
cancel lease

10 The ²[Provincial Government] may cancel the lease of the tolls of any public ferry on the expiration of six months' notice in writing to the lessee of its intention to cancel such lease.

When any lease is cancelled under this section, the Magistrate of the district in which such ferry is situate shall pay to the lessee such compensation as such Magistrate may with the previous sanction of the ²[Provincial Government] award.

Surrender
of lease

11 The lessee of the tolls of a public ferry may surrender his lease on the expiration of one month's notice in writing to the ²[Provincial Government] of his intention to surrender such lease and on payment to the Magistrate of the district in which such ferry is situate of such compensation as such Magistrate subject to the approval of the ³Commissioner may in each case direct.

Power to
make rules

12 Subject to the control of the ²[Provincial Government] the ³Commissioner of a division, or such other officer as the ²[Provincial Government] may from time to time appoint in this behalf, by name or in virtue of his office may from time to time make rules consistent with this Act—

(a) for the control and the management of all public ferries
within such division and for regulating the traffic at such
ferries.

¹ The words "or section 7A" are inapplicable to Ajmer Merwara.

² Subs. by the A. O. for L. G.

³ See foot note 6 below s. 4 *supra*.

⁴ The words "within such division" are to be omitted in the N. W. F. P. *see* the N. W. F. P. Law and Justice Regulation 1901 (7 of 1901) s. 3 and Sch.

(II —Public Ferries)

¹[(b) for regulating the time and manner at and in which, and the terms on which, the tolls of such ferries may be let by auction, and prescribing the persons by whom auctions may be conducted,]

(c) for compensating persons who have compounded for tolls payable for the use of any such ferry when such ferry has been discontinued before the expiration of the period compounded for and

(d) generally to carry out the purposes of this Act

and when the tolls of a ferry have been let under section 8 such ²Commissioner or other officer may from time to time (subject as aforesaid) make additional rules consistent with this Act—

(e) for collecting the rents payable for the tolls of such ferries,

(f) in cases in which the communication is to be established by means of a bridge of boats pontoons or rafts or a swing bridge, flying bridge or temporary bridge for regulating the time and manner at and in which such bridge shall be constructed and maintained and opened for the passage of vessels and rafts through the same and

(g) in cases in which the traffic is conveyed in boats for regulating (1) the number and kind of such boats and their dimensions and equipment (2) the number of the crew to be left by the lessee for each boat (3) the maintenance of such boats continually in good condition (4) the hours during which and the intervals within which the lessee shall be bound to ply and (5) the number of passengers animals and vehicles and the bulk and weight of other things that may be carried in each kind of boat at one trip

The lessee shall make such returns of traffic as the ²Commissioner or other officer as aforesaid may from time to time require

13 ³[Except with the sanction of the Magistrate of the district or of such other officer as the ⁴[Provincial Government] may from time to time, appoint in this behalf by name or in virtue of his office no person shall establish maintain or work a ferry to or from any point within a distance of two miles from the limits of a public ferry]

Provided that, in the case of any specified public ferry the ⁴[Provincial Government] may by notification in the Official Gazette reduce or increase the said distance of two miles to such extent as it thinks fit

¹ Subs for original clause (b) by the Northern India Ferries Act Amendment Act 1886 (3 of 1886) s 1 (*)

² See foot note 6 below s 4 *supra*

³ Subs for the original para by Act 3 of 1886 s 2 (1)

⁴ Subs by the A O for L C

Private ferry not to ply within two miles of public ferry without sanction

(II—Public Ferries)

Provided also that nothing hereinbefore contained shall prevent persons plying between two places, one of which is without, and one within, the said limits, when the distance between such two places is not less than three miles, or apply to boats ¹[which do not ply for hire, or] which the ²[Provincial Government] expressly exempts from the operation of this section³

Person using
approaches
etc., liable
to pay toll

14 Whoever uses the approach to, or landing place of, a public ferry is liable to pay the toll payable for crossing such ferry

Tolls

15 ⁴Tolls, according to such rates as are, from time to time, fixed by the ²[Provincial Government], shall be levied on all persons, animals, vehicles and other things crossing any river by a public ferry and not employed or transmitted on the public service

Provided that the ²[Provincial Government] may, from time to time, declare that any persons, animals, vehicles or other things shall be exempt from payment of such tolls

Where the tolls of a ferry have been let under section 8, any such declaration, if made after the date of the ⁵[lease], shall entitle the lessee to such abatement of the rent payable in respect of the tolls as may be fixed by the ⁶Commissioner of the division or such other officer as the ²[Provincial Government] may, from time to time, appoint in this behalf by name or in virtue of his office

Table of
tolls

16 The lessee or other person authorised to collect the tolls of any public ferry shall affix a table of such tolls, legibly written or printed in the vernacular language and, also if the ⁶Commissioner of the division so directs, in English in some conspicuous place near the ferry,

Last of tolls

and shall be bound to produce, on demand, a list of the tolls, signed by the Magistrate of the district or such other officer as he appoints in this behalf

Tolls, rents
compensation
and
fines are to
form part of
revenues of
Province

⁷[17 All tolls rents compensation and fines under this Act (other than tolls received by any lessee) shall form part of the revenues of the Province]

¹ Ins. by the Northern India Ferries Act Amendment Act 1886 (3 of 1886) s. 2

² Subs. by the A. O. for L. G. in the C. P. by the Northern India Ferries

(C. 1) or the exemption from tolls of any
perso ly s. 3 of the Indian Tolls (Army)

Act. different local R. and O.

⁵ See foot note 6 below s. 4 supra

⁷ Subs. by the A. O. for original s. 17 which prescribed how the tolls, rents, compensation and fines under the Act should be disposed of in the various Provinces. See, however, para. 4 of the India and Burma (Transitory Provisions) Order 1937

(II—Public Ferries III—Private Ferries IV—Penalties and Criminal Procedure)

18 The ¹[Provincial Government] may, if it thinks fit, from time to time, fix rates at which any person may compound for the tolls payable for the use of a public ferry Compound ing for tolls

III—PRIVATE FERRIES

19 The ²Commissioner of the division may, with the previous sanction of the ¹[Provincial Government], from time to time make rules for the maintenance of order and for the safety of passengers and property at ferries other than public ferries Power to make rules

20 The tolls charged at such ferries shall not exceed the highest rates for the time being fixed under section 15 for similar public ferries Tolls

IV—PENALTIES AND CRIMINAL PROCEDURE

21 Every lessee or other person authorised to collect the tolls of a public ferry, who neglects to affix and keep in good order and repair the table of tolls mentioned in section 16 Penalty for breach of provisions as to table of tolls list of tolls and return of traffic

or who wilfully removes alters or defaces such table or allows it to become illegible

or who fails to produce on demand the list of the tolls mentioned in section 16,

and every lessee who neglects to furnish any return required under section 12

shall be punished with fine which may extend to fifty rupees

22 Every such lessee or other person as aforesaid and any person in possession of a private ferry asking or taking more than the lawful toll or without due cause delaying any person animal vehicle or other thing shall be punished with fine which may extend to one hundred rupees Penalty for taking unauthorised toll and for causing delay

23 Every person breaking any rule made under section 12 or section 19 shall be punished with imprisonment for a term which may extend to six months or with fine which may extend to two hundred rupees, or with both Penalty for breach of rules made under sections 12 and 19

24 When any lessee of the tolls of a public ferry makes default in the payment of the rent payable in respect of such tolls or has been convicted of an offence under section 23 or having been convicted of an offence under section 21 or section 22 is again convicted of an offence under either of those sections Cancellation of lease on default or breach of rules

¹ Sui. by the A. O. for L. G.

² See foot note 6 below s. 4 *supra*

(IV—Penalties and Criminal Procedure)

the Magistrate of the district may, with the sanction of the Commissioner of the division, cancel the lease of the tolls of such ferry, and make other arrangements for its management during the whole or any part of the term for which the tolls were let

Penalties on
passengers
offending

25 Every person crossing by any public ferry, or using the approach to, or landing place thereof who refuses to pay the proper toll, and every person—

who, with intent to avoid payment of such toll, fraudulently or forcibly crosses by any such ferry without paying the toll, or

who obstructs any toll collector or lessee of the tolls of a public ferry or any of his assistants in any way in the execution of their duty under this Act or

who, after being warned by any such toll collector lessee or assistant not to do so goes or takes any animals vehicles or other things into any ferry boat or upon any bridge at such a ferry which is in such a state or so loaded as to endanger human life or property or

who refuses or neglects to leave or remove any animals vehicles or goods from, any such ferry boat or bridge on being requested by such toll collector lessee or assistant to do so

shall be punished with fine which may extend to fifty rupees

Penalty for
maintaining
private ferry
with a prohib-
ited limit

26 Whoever establishes maintains or works a ferry in contravention of the provisions of section 13 shall be punished with fine which may extend to five hundred rupees and with a further fine which may extend to one hundred rupees for every day during which the ferry is maintained or worked in contravention of those provisions]

Fines payable to
lessee

27 Where the tolls of any public ferry have been let under the provisions hereinbefore contained the whole or any portion of any fine realised under section 25 or section 26 may notwithstanding anything contained in section 17 be at the discretion of the convicting Magistrate or Bench of Magistrates paid to the lessee

Penalty for
rash naviga-
tion and
stacking of
timber

28 Whoever navigates anchors moors or fastens any vessel or raft or stacks any timber in a manner so rash or negligent as to damage a public ferry shall be punished with imprisonment for a term which may extend to three months or with fine which may extend to five hundred rupees or with both and the toll collector or lessee of the tolls of such ferry or any of his assistants may seize and detain such vessel raft or timber pending the inquiry and assessment hereinafter mentioned

¹ See footnote 6 below & 4 *supra*

² Subs. by the Northern India Ferries Act Amendment Act 1886 (3 of 1886) & 2 (3) for original & 26

(IV.—Penalties and Criminal Procedure V.—Miscellaneous.)

29. The police may arrest without warrant any person committing an offence against section 25 or section 28

Power to
arrest with
out
warrant

30. Any Magistrate or Bench of Magistrates having summary jurisdiction under Chapter XVIII of the ¹Code of Criminal Procedure, may try any offence against this Act in manner provided by that Chapter

Power to try
summarily

31. Every Magistrate or Bench of Magistrates trying any offence under this Act may inquire into and assess the value of the damage (if any) done or caused by the offender to the ferry concerned, and shall order the amount of such value to be paid by him in addition to any fine imposed upon him under this Act, and the amount so ordered to be paid shall be leviable as if it were a fine, or, when the offence is one under section 28, by the sale of the vessel, raft or timber causing the damage, and of any thing found in or upon such vessel or raft

Magistrate
may assess
damage
done by
offender

The ²Commissioner of the division may on the appeal of any person deeming himself aggrieved by an order under this section, reduce or remit the amount payable under such order

V — MISCELLANEOUS

32 When the lease of the tolls of any ferry is surrendered under section 11 or cancelled under section 24 the Magistrate of the district may take possession of all boats and their equipment and all other material and appliances used by the lessee for the purposes of such ferry, and use the same (paying such compensation for the use thereof as the ³[Provincial Government] may in each case direct) until such Magistrate can conveniently procure proper substitutes therefor

Power to
take posses-
sion of boats,
etc., on sur-
render or
cancellation
of lease

33 When any boats or their equipment or any materials or appliances suitable for setting up a ferry are emergently required for facilitating the transport of officers, or troops of Her Majesty on duty or of any other persons on the business of Her Majesty, or of any animals, vehicles or baggage belonging to such officers troops or persons or of any property of Her Majesty, the Magistrate of the district may take possession of and use the same (paying such compensation for the use thereof as ³[the Central Government, where the transport is in connection with the affairs of the Central Government and the Provincial Government in other cases] may in each case direct) until such transport is completed

Similar
power in
cases of
emergency

34 No suit to ascertain the amount of any compensation payable, or abatement of rent allowable under this Act shall be cognizable by any Civil Court

Jurisdiction
of Civil
Courts
barred

¹ See now the Code of Criminal Procedure 1898 (5 of 1898) Ch. 22

² See foot note 6 below & 4 *supra*

³ Subs. by the A. O. for 'the L. G.

(V—Miscellaneous)

Elephants Preservation

[1879: Act VI.]

Delegation
of powers

35 The ¹[Provincial Government] may, from time to time, delegate, under such restrictions as it thinks fit, any of the powers conferred on it by this Act to any ²Commissioner of a division or Magistrate of a district, or to such other officer as it thinks fit, by name or by virtue of his office

36 [Validation of proceedings since repeal of Regulation VI of 1891 in Punjab] *Rep. by the Amending Act, 1891 (XII of 1891)*

THE ELEPHANTS' PRESERVATION ACT, 1879.

ACT No VI OF 1879³

[22nd March, 1879]

An Act for the preservation of wild elephants

Preamble WHEREAS it is expedient to provide for the preservation of wild elephants, It is hereby enacted as follows —

Short title 1 This Act may be called the Elephants' Preservation Act, 1879

Local extent It extends to the territories now respectively administered by the Lieutenant Governor of the North Western Provinces and the Chief Commissioners of Oudh, the Central Provinces ⁴* * * and Coorg, and the ¹[Provincial Government] may, ⁵* * * extend it to any other local area⁶ by notification in the ⁷[Official Gazette]

¹ Subs ly the A O for L G

² See foot note 6 below s 4 *supra*

³ For the Statement of Objects and Reasons see Gazette of India 1878 Pt V p 199 for the Preliminary Report of the Select Committee see *ibid* Pt V p 387 for discussions in Council see *ibid*, 1879 Supplement pp 1103 1855, and *ibid*, 1879 Supplement pp 348 350

This Act has been declared to be in force in the Chittagong Hill Tracts by the Chittagong Hill Tracts Regulation 1900 (1 of 1900) and in the Angul District by the Angul Laws Regulation 1936 (5 of 1936)

It has been amended in its application to Bengal by the Elephants Preservation (Ben Amendment) Act 1932 (Run 5 of 1932)

⁴ The words British Burma rep by the A O

⁵ The words with the previous sanction of the G G in C rep by s 2 and Sch I of the Devolution Act 1920 (38 of 1920)

⁶ The Act has been extended to the following places namely —

Kala Sukindah in Cuttack see Calcutta Gazette 1882 Pt I p 278

the District of Mynenburgh see Calcutta Gazette, 1883 Pt I n 416

the District of Midnapur see Ben R and O

the Districts of Kamrup Darrang Nagaong Silsagar Lakhimpur Cachar the Naga Hills and the Khasi and Jaintia Hills see Assam Gazette 1880, p 340

the Garo Hills (with the exception of certain portions of the estates of the zamindar of Bijni) see Assam Gazette 1899 Pt II p 431

⁷ the Eastern Dues in the district of Goalpara and that part of the District of Sylhet which has not been permanently settled see Assam Gazette 1883 Pt I p 2 the Makochan Sub-division of the Naga Hills District see Notification No 163 I printed Assam Gazette 1891 Pt II p 35 the Jaintia Hills see Gazette of India 1890 Pt II, p 345 Notification No 923 I dated April 4 1898

⁸ Subs ly the A O for Official Gazette

So far as regards the power to make declarations and rules, it shall come into force on the passing thereof In other respects it shall come into force on the first day of April 1879

Commence
ment

2 [Repeal] Rep by the Repealing and Amending Act, 1930 (1 III of 1930) s 3 and Sch II

3 No person shall kill, injure or capture, or attempt to kill, injure or capture, any wild elephant unless—

Killing and
capture of
wild ele
phants pro
hibited

(a) in defence of himself or some other person,

(b) when such elephant is found injuring houses or cultivation, or upon, or in the immediate vicinity of, any main public road or any railway or canal or

(c) as permitted by a license granted under this Act

4 Every wild elephant captured, and the tusks of every wild elephant killed, by any person not licensed under this Act, shall be the property of Government]

Rights of
Government
with respect
to certain
elephants
and tusks

5 The Collector or Deputy Commissioner of any district may subject to such rules as may for the time being be in force under this Act grant licenses to kill or to capture or to kill and capture wild elephants in such district

License to
kill and
capture wild
elephants.

Provided that no such license shall authorize any person to enter upon any land without the consent of the owner or occupier thereof

6 The 3[Provincial Government] may from time to time⁴ * * * declare what shall be deemed to be main public roads and canals within the meaning of this Act and

Power of
Provincial
Government
to declare
what are
main roads
and canals,
and to make
rules as to
licenses

make rules consistent with this Act for regulating—

(a) the grant and renewal of licenses under this Act

(b) the fees (if any) in money tusks or captured elephants to be charged on such grant and renewal

(c) the time during which such licenses shall continue in force, and

(d) the conditions (if any) on which they shall be granted

All such declarations and rules shall be published in the 5[Official Gazette] and shall thereupon have the force of law

¹ Subs by the Elephants Preservation Act (1879) Amendment Act 1883 (2 of 1883) for the original section

² For rules under this section see different local Rules and Orders

³ Subs by the A O for I G

⁴ The words subject to the control of the C G in C rep by s 2 and Sch I of the Devolution Act 1920 (18 of 1920)

⁵ Subs by the A O for local official Gazette

What rules
under sec-
tion 3
may pro-
vide for

6 The rules to be made under section 3 ¹* * may, among other matters,—

- (a) direct that no hackney carriage, or no hackney carriage of a particular description, shall be let to hire, or taken to ply, or offered for hire, except under a license granted in that behalf,
- (b) direct that no person shall act as driver of a hackney carriage except under a license granted in that behalf,
- (c) provide for the issue of the licenses referred to in clauses (a) and (b), prescribe the conditions (if any) on which such licenses shall be granted, and fix the fees (if any) to be paid therefor,
- (d) regulate the description of animals, harness and other things to be used with licensed carriages, and the condition in which such carriages, and the animals, harness and other things used therewith, shall be kept, and the lights (if any) to be carried after sunset and before sunrise,
- (e) provide for the inspection of the premises on which any such carriages, animals, harness and other things are kept,
- (f) fix the time for which such licenses shall continue in force, and the events (if any) upon which within such time they shall be subject to revocation or suspension,
- (g) provide for the numbering of such carriages,
- (h) determine the times at which and the circumstances under which, any person keeping a hackney carriage shall be bound to let or refuse to let such carriage to any person requiring the same,
- (i) appoint places as stands for hackney carriages, and prohibit such carriages waiting for hire except at such places,
- (j) limit the rates or fares, as well for time as distance, which may be demanded for the hire of any hackney carriage, and prescribe the minimum speed at which such carriages when hired by time shall be driven,
- (k) limit the number of persons, and the weight of property, which may be conveyed by any such carriage,
- (l) require the owner or person in charge of any such carriage to keep a printed list of fares, in English and such other language as may be prescribed affixed inside such carriage

¹ The words and figure or section 4 rep by the A O

in such place as may be determined by the rules, and prohibit the destruction or defacement of such list

(m) require drivers to wear a numbered badge or ticket and to produce their licenses when required by a Magistrate or other person authorized by the rules in this behalf, and prohibit the transfer or lending of such licenses and badges, and

(n) provide for the deposit of property found in such carriages and the payment of a fee by the owner of such property on the delivery thereof to him

7 Any person breaking any rule made under this Act shall be punished with fine which may extend to fifty rupees

Penalty for breach of rules

8 The amount of any fees received and the amount of any expenses incurred in giving effect to this Act shall 1* * * be credited and debited respectively to the municipal fund 2* * *

Disposal of fees and payment of expenses

9 If any dispute arises between the hirer of any hackney-carriage and the owner or driver of such carriage as to the amount of the fare payable by such hirer under any rule made under this Act such dispute shall, upon application made in that behalf by either of the disputing parties, be heard and determined by any Magistrate or Bench of Magistrates within the local limits of whose jurisdiction such dispute has arisen, and such Magistrate or Bench may besides determining the amount so in dispute, direct that either party shall pay to the other such sum as compensation for loss of time as such Magistrate or Bench thinks fit

Power of Magistrate to decide disputes regarding fares

Any sum determined to be due or directed to be paid under this section shall be recoverable as if it were a fine³

The decision of any Magistrate or Bench in any case under this section shall be final

When any such case is heard by a Bench any difference of opinion arising between the members of such Bench shall be settled in the same manner as differences of opinion arising between such members in the trial of criminal cases

10 If, at the time any dispute mentioned in section 9 arises any Magistrate or Bench of Magistrates having jurisdiction in respect of such dispute is sitting within the local limits to which the rules apply the hirer of the carriage may require the driver thereof to take him

In case of dispute hirer may require driver to take him to Court

¹ The words in any municipality rep by the A O

² The words and in any cantonment where there is a cantonment fund to such fund rep by the A O

³ As to recovery of fines see the Central Criminals Act 1897 (10 of 1897) s 25

in the same to the Court of such Magistrate or Bench for the purpose of making an application under that section

Any driver neglecting or refusing to comply with such requisition shall be punished with imprisonment for a term which may extend to one month, or with fine not exceeding fifty rupees, or with both

THE TRANSPORT OF SALT ACT, 1879

ACT No XVI OF 1879¹

[30th September, 1879]

An Act to restrict the transport of Salt by Sea

Preamble

WHEREAS it is expedient to restrict the transport of salt by sea in manner hereinafter appearing, It is hereby enacted as follows —

Short title

1 This Act may be called the Transport of Salt Act, 1879

Local extent

It extends to the western coast of British India north of Cochin, and to the sea within a distance of a marine league from such coast,

2* * * *

Definition

3[1A The Central Board of Revenue" means the Central Board of Revenue constituted under the Central Board of Revenue Act, 1924] IV

Penalties for carrying salt in certain vessels

2. When any salt is carried by sea in any vessel other than a vessel of the burden of three hundred tons and upwards, the owner and master of such vessel shall each be punished with fine which may extend to one thousand rupees, or with imprisonment for a term which may extend to six months, or with both

Exceptions

3 Nothing in section 2 applies to—

(a) salt covered by a permit granted under 4[Chapter V of the Madras Salt Act, 1889, or Chapter V of the Bombay Salt Act, 1890, or the corresponding law for the time being in force 5 * * *],

¹ For Statement of Objects and Reasons see Gazette of India, 1877 Pt V, p 16, for First Report of the Select Committee see *ibid*, p 94a and for Proceedings in Council, see *ibid*, Supplement pp 88 126 493 and *ibid*, 1879 p 1223

² The words and it shall come into force at once rep by the Repealing and Amending Act, 1901 (11 of 1901) s 3 and Sch III

³ Ins by the Salt Law Amendment Act, 1925 (22 of 1925) s 2 and Sch Pt I That Act however, has not been brought into force in Sind

⁴ Subs by the Amending Act, 1891 (12 of 1891) for s 28 or s 31 of the Act of the Governor of Bombay in Council No 7 of 1873 or by a rawana granted under Madras Regulation 1 of 1805 s 11, clause third

⁵ The words in the territories administered by the Governor of Fort St George in Council or the Governor of Bombay in Council as the case may be rep by the A O

(b) salt covered by a pass granted by any officer whom the ¹[Central Board of Revenue] may appoint in this behalf

(c) such amount of salt carried on board any vessel for consumption by her crew or by the passengers or animals (if any) on board as the ¹[Central Board of Revenue] may, from time to time, exempt from the operation of section 2

4 When any officer empowered by the ²[Chief Customs Authority], whether by name or office to act under this section has reason to believe from personal knowledge or from information taken down in writing that any salt is being carried, or has within the twenty four hours next before the requirement first hereinafter mentioned been carried in any vessel so as to render the owner or master of such vessel liable to the penalties prescribed by section 2 he may require such vessel to be brought to and thereupon may—

Power of
stoppage
search and
arrest

(a) enter and search the same,

(b) require the master of such vessel to produce any documents in his possession relating to such vessel or the cargo thereof,

(c) seize such vessel if the said officer has reason to believe it liable to confiscation under this Act and cause it to be brought with its crew and cargo into any port in British India, and

(d) where salt is found on board such vessel search and arrest without a warrant any person on board the same who such officer has reason to believe is punishable under section 2

5 Any master of a vessel refusing or neglecting to bring to or to produce his papers when required to do so by an officer acting under section 4,

Penalties
for resist-
ing officer

and any person obstructing any such officer in the performance of his duty

may be arrested by such officer without a warrant and shall be punished with fine which may extend to one thousand rupees or with imprisonment for a term which may extend to six months or with both

6 Every vessel in which salt is carried so as to render the owner or master of such vessel liable to the penalties prescribed by section 2 the cargo on board such vessel and all salt in respect of which an offence under this Act has been committed shall be liable to confiscation

Confiscation
of vessel
and cargo

¹ Subs. by the Salt Law Amendment Act 1925 (22 of 1925) s. 2 and Sch., Pt. I for Governor of Bombay in Council. In Sind where that Act is not in force read Provincial Govt. of Sind. See the Sind Laws Regulation 1936 (6 of 1936)

² Subs. by the Decentralization Act 1914 (4 of 1914) s. 2 and Sch. Pt. I, for Governor of Bombay in Council

Dekkhan Agriculturists' Relief [1879: Act XVII.]

The confiscation of any vessel under this section shall include her tackle, apparel and furniture

Confiscations under this section may be adjudged by the Chief Customs authority, or by such other officer as the ¹[Central Government] may, from time to time, appoint in this behalf

Whenever any Customs officer is satisfied that any article is liable to confiscation under this section, he may seize such article, and shall at once report the seizure to his superior officer for the information of the Chief Customs authority or such other officer as aforesaid, and such authority or officer may, if satisfied on such report or after making such inquiry as it or he thinks fit, that the article so seized is liable to confiscation, either declare it to be confiscated, or impose a fine in lieu thereof not exceeding the value of the article

Jurisdiction

7. For the purpose of the adjudication of penalties under section 2 or section 5, every offence thereunder may be deemed to have been committed within the limits of the jurisdiction of the Magistrate of any place where the offender is found, or to which, if arrested under section 4 or section 5, he may be brought

Power to exempt from operation of Act

8 The ²[Central Government] may from time to time, by notification in the ³[Official Gazette], exempt the carriage of salt within any local limits or in any class of vessels from the operation of this Act, and by like notification, again subject such carriage to the operation of this Act

THE DEKKHAN AGRICULTURISTS' RELIEF ACT, 1879

CONTENTS

PREFACE

CHAPTER I

PRELIMINARY

SECTIONS

1 Short title.

Commencement

Local extent

¹ Subs by the A O for G G in C which had been subs for f G ' by the Salt Law Amendment Act 1923 (22 of 1925) s 2 and Sch Pt I in still where that Act is not in force read Provincial Govt

² Subs by the A O for G G in C

³ Subs by the A O for Gazette of India

SECTIONS

2 Construction

2A Jagirdars, etc , to be deemed Subordinate Judges

CHAPTER II

OF THE HEARING OF CERTAIN SUITS BY SUBORDINATE JUDGES

3 Application of this Chapter

4 Certain suits to be instituted in Courts of first class Subordinate Judges

5 Subordinate Judges not to act as Judges of Small Cause Courts

6 Jurisdiction of Subordinate Judge and Small Cause Court

7 Summons to be for final disposal of suit

Court to examine defendant as witness

8, 9 [*Repealed*]

10 No appeal to lie

CHAPTER III

OF SUITS AND OTHER PROCEEDINGS TO WHICH AGRICULTURISTS ARE PARTIES

10A Power of Court to determine nature of transactions and to admit evidence of an oral agreement or statement

11 Agriculturists to be sued where they reside

12 History of transactions with agriculturist debtors to be investigated

13 Mode of taking account

13A In certain cases rent may be charged in lieu of profits

14 15 [*Repealed*]

15A Mortgagor entitled to decree for redemption though time fixed by mortgage has not arrived or debt has not been paid

15AA Power of Court to name some future date for payment by the mortgagor

15B Power to order payment by instalments in case of decree for redemption foreclosure or sale

Power to continue the mortgagee in possession

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THE DEKKHAN AGRICULTURISTS' RELIEF ACT, 1879

CONTENTS

PREAMBLE

CHAPTER I

PRELIMINARY

SECTIONS

- 1 Short title
- Commencement
- Local extent

¹ Subs. by the A. O. for G. G. in C. which had been subs. for I. G. by the Salt Law Amendment Act 1925 (22 of 1925) s. 2 and Sch. Pt. I in sub. where that Act is not in force *read* Provincial Govt.

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SECTIONS

2 Construction

2A Jigirdars, etc , to be deemed Subordinate Judges

CHAPTER II

OF THE HEARING OF CERTAIN SUITS BY SUBORDINATE JUDGES

3 Application of this Chapter

4 Certain suits to be instituted in Courts of first class Subordinate Judges

5 Subordinate Judges not to act as Judges of Small Cause Courts

6 Jurisdiction of Subordinate Judge and Small Cause Court

7 Summons to be for final disposal of suit

Court to examine defendant as witness

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CHAPTER III

OF SUITS AND OTHER PROCEEDINGS TO WHICH AGRICULTURISTS ARE PARTIES

10A Power of Court to determine nature of transactions and to admit evidence of an oral agreement or statement

11 Agriculturists to be sued where they reside

12 History of transactions with agriculturist debtors to be investigated

13 Mode of taking account

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15B Power to order payment by instalments in case of decree for redemption foreclosure or sale

Power to continue the mortgagee in possession

SECTIONS.

- 15C. Power to order payment by instalments in suits for possession of mortgaged property.
- 15D. Mortgagor may sue for accounts.
- 16. Agriculturist-debtors may sue for accounts
Amount of debts in such cases to be determined according to foregoing provisions.
- 17. Decree under section 16 may provide for payment by instalments.
Execution of decrees under this section.
- 18. Payment into Court in cases under section 16
- 19. [*Répealed.*]
- 20. Power to fix instalments in execution.
- 21. Arrest and imprisonment in execution of decree for money abolished.
- 22. Immoveable property exempted from attachment and sale unless specifically pledged.
- 22A. Power of Collector to set aside sale
- 23. Chapter not to apply to Village munsifs' Courts.

CHAPTER IV.

OF INSOLVENCY

- 24. Subordinate Judges to have jurisdiction in agriculturists' cases.
- 25. Agriculturists may apply for adjudication in cases not provided for by Code.
- 26. Modification of section 351 of the Code
- 27. Receiver
- 28. Proof of debts
- 29. Immoveable property not to vest in Receiver, but may be managed for benefit of creditors
- 30. Secured debts.
- 31. Insolvent incompetent to sell, etc., property dealt with under sections 29 and 30
- 32. Scheduled debts discharged.
- 33. Appeals barred.

CHAPTER V

OF VILLAGE MUNSIFS

SECTIONS

- 34 Appointment of Village munsifs
 - 35 Suits triable by them
 - Jurisdiction of other Courts excluded
 - Proviso
 - 36 District Judge's power of revision
 - 37 Power of Provincial Government to make rules
-

CHAPTER VI

OF CONCILIATION

- 38 Appointment of Conciliators
 - 39 Matters which may be brought before Conciliator
 - 40 Procedure thereupon
 - Day for attendance may from time to time be postponed
 - 41 When all parties appear Conciliator to endeavour to reconcile them
 - 42 Conciliator to hear statements of witnesses etc
 - 43 Any agreement arrived at to be reduced to writing
 - 44 Procedure when agreement finally disposes of case and in other circumstances
 - 45 Procedure where agreement is for reference to arbitration
 - 46 Certificate to be given to applicant if conciliation fails
 - 47 Suit, or application for execution not to be entertained by Civil Court unless such certificate is produced
 - 48 Allowance to be made in period of limitation
 - 48A [*Repealed*]
 - 49 Provincial Government to make rules
-

CHAPTER VII

SUPERINTENDENCE AND REVISION

- 50 District Judge to inspect etc
- 51 District Judge may withdraw case from Conciliator or Subordinate Judge,
 - or sit with Subordinate Judge as a Bench for trial of any case

SECTIONS

- 52 Appointment of Assistant or Subordinate Judges to aid District Judge
- 53 Of revision
- 54 Special Judge

 CHAPTER VIII

REGISTRATION BY VILLAGE REGISTRARS

- 55 Appointment of Village registrars
- 56 Instruments executed by agriculturist not to be deemed valid unless executed before a Village registrar
- 57 Such instruments to be written by, or under the superintendence of, a Village registrar and executed in his presence
- Attestation of such instruments
- 58 Registration of instruments by Village registrars
- 59 Consideration to be fully stated in every instrument executed before a Village registrar
- Previous instruments to be produced
- Production of copy of previous instrument when to be permitted
- 60 Registration under this Act to be deemed equivalent to registration under Indian Registration Act, 1877
- 61 Superintendence of Village registrars and custody and destruction of their records
- 62 Exemption of instruments to which the Crown or any officer of the Crown is a party
- 63 Power of Provincial Government to make rules

 CHAPTER VIII A

REGISTRATION OF INSTRUMENTS REFERRED TO IN SECTION 17 OF THE INDIAN REGISTRATION ACT, 1877

- 63A Mode of execution by agriculturists of instruments required to be registered under Act III of 1877
-

CHAPTER IX

OF RECEIPTS AND STATEMENTS OF ACCOUNT

SECTIONS.

- 64 Agriculturists entitled to written receipts
 - 65 Agriculturists entitled to annual statements of account
 - 66 Agriculturists entitled to have account made up from time to time in a pass book
 - 67 Penalty for contravention of sections 64 to 66
-

CHAPTER X

LEGAL PRACTITIONERS

- 68 Pleaders etc excluded in certain case
 - 69 Power of Court to appoint pleader for agriculturist
-

CHAPTER XI

MISCELLANEOUS

- 70 Mortgages etc to be valid only when written
- 71 Bar of application of section 258 Act XIV 1882
- 71A Rate of interest allowable on taking an account
- 72 Limitation
- 73 [*Repealed*]
- 73A Certain agricultural produce exempted from attachment etc
- 74 Civil Procedure Code to apply in Subordinate Judges' Courts
- 74A Co-operative credit societies
- 75 Additional power to make rules
- 76 Rules to be published

(Chapter I—Preliminary)

ACT No XVII OF 1879¹

[29th October 1879]

An Act for the relief of Indebted Agriculturists in certain parts of the Dekkhan

Preamble

WHEREAS it is expedient to relieve the agricultural classes in certain parts of the Dekkhan from indebtedness It is hereby enacted as follows —

CHAPTER I

PRELIMINARY

Short title
Commence
ment

1 This Act may be cited as the ²Dekkhan Agriculturists Relief Act, 1879 and it shall come into force on the first day of November, 1879

Local extent

3[This section and] sections 11, 56 60 and 62 extend to the whole of British India The rest of this Act extends only to the districts of Poona Satara, Sholapur and Ahmednagar, ⁴[but may, from time to time be extended wholly or in part by the ⁵[Provincial Government] ⁶* to any other district or districts in the Presidency of Bombay,] ⁷[or to any part or parts of any other such district or districts]

¹For Statement of Objects and Reasons see Gazette of India 1879 Pt V, p 796 for Report of the Select Committee see *ibid* p 939 for Proceedings in Council relating to the Bill it was originally proposed to introduce see *ibid* 1878 Supplement p 1028 and for Proceedings relating to the Bill which included the provisions of both this Bill and the Bill which the Local Council had introduced see *ibid* 1879 Supplement pp 595 833 873 and 1377

Ss 2 3 and 11 (ss 2 and 11 subject to modifications) have been applied to British Baluchistan under ss 5 and 5A of the Scheduled Districts Act 1874 (14 of 1874) see Gazette of India 1935 Pt II A p 4

²Acts 17 of 1879 23 of 1881 and 22 of 1882 may be cited collectively as the Dekkhan Agriculturists Relief Acts 1879 to 1882—see s 1 (1) of the Dekkhan Agriculturists Relief Act 1882 (22 of 1882) The Acts of 1879 to 1882 and Act 23 of 1886 may be cited collectively as the Dekkhan Agriculturists Relief Acts 1879 to 1886—see s 1 (1) of the Dekkhan Agriculturists Relief Act 1886 (23 of 1886) The Acts of 1879 to 1886 and Act 6 of 1895 may be cited collectively as the Dekkhan Agriculturists Relief Acts 1879 to 1895—see s 1 (1) of the Dekkhan Agriculturists Relief Act 1895 (6 of 1895) The Acts of 1879 to 1895 and Pom Act I of 1902 may be cited collectively as the Dekkhan Agriculturists Relief Acts 1879 to 1902—see s 1 (1) of the Dekkhan Agriculturists Relief Act 1902 (Bom 1 of 1902)

³These words were inserted by s 3 of the Dekkhan Agriculturists Relief Act, 1881 (23 of 1881) and are to be deemed to have always been inserted

⁴Ins by s 3 of the Dekkhan Agriculturists Relief Act 1886 (23 of 1886)

⁵Subs by the A O for L G

⁶The words with the previous sanction of the G G in C rep by s 2 and Sch I of the Devolution Act 1970 (38 of 1970)

⁷Ins by s 4 of the Dekkhan Agriculturists' Relief Act 1895 (6 of 1895)

(Chapter I—Preliminary)

¹[2. In construing this Act, unless there is something repugnant in the subject or context, the following rules shall be observed, namely —

1st.—"Agriculturist" shall be taken to mean a person who by himself or by his servants or by his tenants earns his livelihood wholly or principally by agriculture carried on within the limits of a district or part of a district to which this Act may for the time being extend, or who ordinarily engages personally in agricultural labour within those limits

Explanations —(a) An agriculturist who, without any intention of changing his status as such, temporarily ceases to earn his livelihood by agriculture or to engage personally in agricultural labour as aforesaid, or who is prevented from so earning his livelihood or engaging in agriculture by age or bodily infirmity or by necessary absence in the military service of Her Majesty, does not thereby cease to be an agriculturist within this definition

(b) An assignee of Government assessment or a mortgagee is not as such an agriculturist within this definition

2nd —In Chapters II, III, IV and VI, and in section 69, the term "agriculturist," when used with reference to any suit or proceeding, shall include a person who, when any part of the liability which forms the subject of that suit or proceeding was incurred, was an agriculturist within the meaning of that word as then defined by law

3rd —An agriculturist shall be deemed to reside where he earns his livelihood by agriculture or personally engages in agricultural labour as aforesaid.

4th —"Money" shall be deemed to include agricultural produce, implements and stock

5th —"Lease" shall be deemed to include a counterpart, kabulyat, an undertaking to cultivate or occupy, and an agreement to lease

6th —"Standing crops" shall include crops of all sorts attached to the soil, and leaves, flowers, and fruits upon, and juice in, trees and shrubs]

2[7th —For the purposes of Chapters VIII and VIII A an instrument or a copy of an instrument drawn up on a printed form by or under the superintendence of a village-registrar or of a sub-registrar shall be deemed to be an instrument or copy written or made by or under the superintendence of such registrar or sub-registrar. In this

¹ Subs. by the Dekkhan Agriculturists' Relief Act, 1895 (6 of 1895), s. 5, for original section

² Cl. 7th ins. by the Bombay Repealing and Amending Act, 1910 (Bom. 1 of 1910)

(Chapter I—Preliminary Chapter II—Of the Hearing of certain Suits by Subordinate Judges)

clause the term printed form shall be deemed to include a form prepared by any mechanical copying press]

Jagirdars
etc to be
deemed
Subordinate
Judges

¹[2A Every Jagirdar and other authority invested with powers under Bombay Regulation XIII of 1830 and Act XV of 1840 shall, for the purposes of this Act, be deemed to be a Subordinate Judge of such class as the ²[Provincial Government] may from time to time direct]

CHAPTER II

OF THE HEARING OF CERTAIN SUITS BY SUBORDINATE JUDGES

Application
of this
Chapter

3 The provisions of this Chapter shall apply to—

- (a) suits for an account ³[whatever be the amount or value of the subject matter thereof,] instituted ⁴* * * *
* * by an agriculturist in the Court of a Subordinate Judge under the provisions hereinafter contained, and
(b) suits of the descriptions next hereinafter mentioned ⁵* *
* * * *

- (1) when such suits are heard by Subordinate Judges of the first class and the subject matter thereof does not exceed in amount or value five hundred rupees, or
(2) when such suits are heard by Subordinate Judges of the second class and the subject matter thereof does not exceed in amount or value one hundred rupees, or
(3) when such suits are heard by Subordinate Judges of the second class and the subject matter thereof exceeds one hundred rupees, but does not exceed five hundred rupees, in amount or value, and the parties to the suits agree that such provisions shall apply thereto

¹ S 2A ins by the Dekkhan Agriculturists Relief Act 1882 (22 of 1882) s 4

² Suits by the A O for L O

³ Ins by Act 22 of 1832 s 5

⁴ The words on or after the first day of November, 1879 rep by the Amending Act 1895 (16 of 1895) s 2 and Sch I

⁵ The words and instituted on or after the same date rep by s 2 and Sch I, *ibid*

(Chapter II.—Of the Hearing of certain Suits by Subordinate Judges)

The descriptions of suits referred to in clause (b) are the following, namely :—

- (10) suits for the recovery of money alleged to be due to the plaintiff—
 - on account of money lent or advanced to, or paid for, the defendant, or
 - as the price of goods sold, or
 - on an account stated between the plaintiff and defendant, or
 - on a written or unwritten engagement for the payment of money not hereinbefore provided for,
- (2) suits for recovery of money due on contracts other than the above and suits for rent or for moveable property, or for the value of such property, or for damages, and
- (y) suits for foreclosure or for the possession of mortgaged property, or for sale of such property, or for foreclosure ¹[and] sale, when the defendant, or any one of the defendants, ²* * * * * is an agriculturist, and
- (z) suits for the redemption of mortgaged property when the plaintiff, or, where there are several plaintiffs, any one of the plaintiffs, is an agriculturist

4. Where a Subordinate Judge of the first class and a Subordinate Judge of the second class have ordinary jurisdiction in the same local area, every suit referred to in section 3, clause (b), and instituted in such local area, shall, if the amount or value of the subject-matter of such suits exceeds one hundred rupees and does not exceed five hundred rupees, be instituted in the Court of the Subordinate Judge of the first class

Certain suits to be instituted in Courts of first class Subordinate Judges

5. Notwithstanding anything contained in the Bombay Civil Courts Act, 1869, section 28, no Subordinate Judge shall be invested with the jurisdiction of a Judge of a Court of Small Causes ³* * *

Subordinate Judges not to act as Judges or Small Cause Courts

¹ Subs by s 5 of the Dekkhan Agriculturists Relief Act, 1885 (23 of 1886) for "or"

² The words "not being merely a surety for the principal debtor" rep by the Dekkhan Agriculturists' Relief Act, 1881 (23 of 1881), s 5

³ The words "and any such jurisdiction heretofore conferred on any Subordinate Judge shall be deemed, except as regards suits instituted before the said first day of November, 1879 to have been withdrawn" rep by the Amending Act, 1895 (16 of 1895), s 2 and Sch I

(Chapter II—Of the Hearing of certain Suits by Subordinate Judges
Chapter III—Of Suits and other Proceedings to which Agriculturists
are Parties)

Jurisdiction
of
Subordinate
Judge and
Small Cause
Court

6 The ¹[Provincial Government] may, from time to time, by notification in the ²[Official Gazette], direct that any class of suits which a Subordinate Judge would be precluded from hearing by section 12 of ³Act XI of 1865 (to consolidate and amend the law relating to Courts of Small Causes beyond the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature), shall be heard and determined by him and not otherwise, and may by a like notification, cancel any such direction

Summons to
be for final
disposal of
suit.

7. In every case in which it seems to the Court possible to dispose of a suit at the first hearing, the summons shall be for the final disposal of the suit

Court to
examine
defendant
as witness

In every suit the Court shall examine the defendant as a witness unless, for reasons to be recorded by it in writing, it deems it ⁴[clearly] unnecessary so to do

⁴[Explanation—The compulsory examination of the defendant shall not be dispensed with merely by reason of the fact that the defendant has filed a written statement]

8 [Written statements] Rep by the Deccan Agriculturists' Relief Act, 1895 (VI of 1895), s 3

9 [Record of evidence] Rep by the Deccan Agriculturists' Relief Act, 1895 (VI of 1895), s 3

No appeal to
lie

10 No appeal shall lie from any decree or order passed in any suit to which this Chapter applies

CHAPTER III

OF SUITS AND OTHER PROCEEDINGS TO WHICH AGRICULTURISTS ARE PARTIES

Power of
Court to
determine
nature of

⁵[10A Whenever it is alleged at any stage of any suit or proceeding to which an agriculturist is a party that any transaction in issue entered into by such agriculturist or the person, if any, through whom

¹ Subs by the A O for L G

² Subs by the A O for Local Gazette

³ See now s 16 of the Provincial Small Cause Courts Act, 1887 (9 of 1887)

⁴ Ins by s 6 of the Dekkhan Agriculturists Relief Act, 1895 (6 of 1895)

⁵ Ins by s 2 of the Dekkhan Agriculturists Relief (Amendment) Act, 1907 (Dom 2 of 1907)

(Chapter III —Of Suits and other Proceedings to which Agriculturists are Parties)

he claims was a transaction of such a nature that the rights and liabilities of the parties thereunder are triable wholly or in part under this Chapter, the Court shall, notwithstanding anything contained in section 92 of the Indian Evidence Act, 1872, ¹[or in section 49 of the Indian Registration Act, 1908] or in any other law for the time being in force, have power to inquire into and determine the real nature of such transaction and decide such suit or proceeding in accordance with such determination and shall be at liberty, notwithstanding anything contained in any law as aforesaid, to admit evidence of any oral agreement or statement ¹[or unregistered documents] with a view to such determination and decision

transactions
and to
admit
evidence of
an oral
agreement
or statement.

Provided that such agriculturist or the person, if any, through whom he claims was an agriculturist at the time of such transaction

Provided further that nothing in this section shall be deemed to apply to any suit to which a *bonâ fide* transferee for value without notice of the real nature of such transaction or his representative is a party where such transferee or representative holds under a registered deed executed more than twelve years before the institution of such suit

Illustrations

(a) A landlord sues for possession of land leased by him to an agriculturist. The defendant alleges that he mortgaged the land with possession to the lessor who is entitled to its possession only as such mortgagee and not as owner and asks that he may be allowed to redeem the mortgage without being ejected. The Court may admit evidence on this allegation and if satisfied that it is correct may decline to eject the defendant as tenant, and allow the suit to be converted into one for redemption of the mortgaged property

(b) An agriculturist sues to redeem property alleged to have been mortgaged by a deed in the form of a lease. The Court may admit evidence of the intention of the parties outside the deed in order to determine whether the transaction was a mortgage or a lease and if satisfied that the transaction was a mortgage may enforce the deed as a mortgage deed

(c) A money lender sues to enforce a sale deed entered into by an agriculturist. It is alleged that there was a contemporaneous oral agreement that the transaction should be deemed to be a mortgage. The Court may admit evidence of such oral agreement, and if satisfied of the existence of the agreement may decline to enforce the deed as a sale deed

(d) An agriculturist sues to redeem property alleged to have been mortgaged by a deed in the form of a sale. The Court may admit evidence of the intention of the parties outside the deed in order to determine whether the transaction was a mortgage or a sale and if satisfied that the transaction was a mortgage may enforce the deed as a mortgage deed]

¹ Ins. by the Dekkhan Agriculturists Relief (Amendment) Act, 1935 (Bom 5 of 1935), s. 2

(Chapter III —Of Suits and other Proceedings to which Agriculturists are Parties)

Agricultur-
ists to be
sued where
they reside

11. Every suit of the description mentioned in section 3, clause (w), may, if the defendant, or, when there are several defendants, one only of such defendants, is an agriculturist, be instituted and tried in a Court within the local limits of whose jurisdiction such defendant resides, and not elsewhere

Every such suit in which there are several defendants who are agriculturists may be instituted and tried in a Court within the local limits of whose jurisdiction any one of such defendants resides, and not elsewhere

Nothing herein contained shall affect sections 22 to 25 (both inclusive) of the Code of Civil Procedure

History of
transaction-
with agricul-
tural debtor
to be investi-
gated.

12 In any suit of the description mentioned in section 3, clause (w), in which the defendant or any one of the defendants * * * is an agriculturist,

and in any suit of the descriptions mentioned in section 3, clause (y) or clause (z),

¹[the Court, if the amount of the creditor's claim is disputed, shall examine both the plaintiff and the defendant as witnesses, unless, for reasons to be recorded by it in writing, it deems it unnecessary so to do, and shall inquire] into the history and merits of the case, from the commencement of the transactions between the parties and the persons (if any) through whom they claim, out of which the suit has arisen, first, with a view to ascertaining whether there is any defence to the suit on the ground of fraud, mistake, accident, undue influence or otherwise, and, secondly, with a view to taking an account between such parties in manner hereinafter provided

When the amount of the claim is admitted and the Court for reasons to be recorded by it in writing believes that such admission is true and is made by the debtor with a full knowledge of his legal rights as against the creditor, the Court shall not be bound so to inquire, but may do so if it thinks fit

¹ See now the Code of Civil Procedure 1908 (5 of 1908)

² The words 'not being merely a surety of the principal debtor' rep by the Dekkhan Agriculturists' Relief Act 1881 (23 of 1881) s 5

³ Subs by the Dekkhan Agriculturists' Relief Act, 1886 (23 of 1886), s 6 for 'the Court shall, if the amount of the creditor's claim is disputed, inquire

(Chapter III —Of Suits and other Proceedings to which Agriculturists are Parties)

In other cases in which the amount of the claim is admitted, the Court shall be bound to inquire as aforesaid

Section 9, clause first, of Bombay Regulation V of 1827 is repealed so far as regards any suit to which this section applies

Nothing herein contained shall affect the right of the parties to require that any matter in difference between them be referred to arbitration.

13 When the Court inquires into the history and merits of a case under section 12, it shall—

Mode of
taking
account

notwithstanding any agreement between the parties or the persons (if any) through whom they claim, as to allowing compound interest or setting off the profits of mortgaged property without an account in lieu of interest, or otherwise determining the manner of taking the account,

and notwithstanding any statement or settlement of account, or any contract purporting to close previous dealings and create a new obligation,

open the account between the parties from the commencement of the transactions and take that account according to the following rules (that is to say) —

- (a) separate accounts of principal and interest shall be taken
- (b) in the account of principal there shall be debited to the debtor such money as may from time to time have been actually received by him or on his account from the creditor, and the price of goods, if any, sold to him by the creditor, as part of the transactions
- ¹[(c) in the account of principal there shall not be debited to the debtor any sum in excess of a sum due or to accrue due under a decree which the debtor may have agreed directly or indirectly to pay in pursuance of any agreement relating to the satisfaction of the said decree]

¹ Subs. by the Dekkhan Agriculturists Relief (Amendment) Act 1932 (Bom 14 of 1932), s. 2, for original cl. (c)

(Chapter III—Of Suits and other Proceedings to which Agriculturists are parties)

- (d) in the account of principal there shall not be debited to the debtor any accumulated interest which has been converted into principal at any statement or settlement of account or by any contract made in the course of the transactions, unless the Court, for reasons to be recorded by it in writing, deems such debit to be reasonable
- (e) in the account of interest there shall be debited to the debtor, monthly, simple interest on the balance of principal for the time being outstanding, at the rate allowed by the Court as hereinafter provided
- (f) all money paid by or on account of the debtor to the creditor or on his account, and all profits service or other advantages of every description, received by the creditor in the course of the transactions (estimated, if necessary, at such money value as the Court in its discretion, or with the aid of arbitrators appointed by it may determine), shall be credited first in the account of interest, and when any payment is more than sufficient to discharge the balance of interest due at the time it is made, the residue of such payment shall be credited to the debtor in the account of principal
- (g) the accounts of principal and interest shall be made up to the date of instituting the suit, and the aggregate of the balances (if any) appearing due on both such accounts against the debtor on that date shall be deemed to be the amount due at that date, except when the balance appearing due on the interest account exceed that appearing due on the principal account in which case double the latter balance shall be deemed to be the amount then due

In certain cases rent may be charged in lieu of profits

[13A Where the mortgaged property is in the possession of the mortgagee or his tenants other than the mortgagor, and the Court is unable to determine what profits have been actually received it may fix a fair rent for such property and charge to the mortgagee such rent as profits for the purpose of section 13

Provided that if it be proved that in any year there was an entire or serious failure of the crops an abatement of the whole or part of such rent may be allowed for the year]

(Chapter III—Of Suits and other Proceedings to which Agriculturists are parties)

14 [Interest to be allowed.] Rep by the Dekkhān Agriculturists' Relief Act, 1895 (VI of 1895), s 3

15 [Reference to arbitration in certain cases] Rep by the Dekkhān Agriculturists' Relief Act, 1895 (VI of 1895), s 3

¹[15A. In a suit of the description mentioned in section 3, clause (z), the Court shall not refuse to pass a decree for redemption merely on the ground that the time fixed for the payment of the principal of the mortgage money has not arrived, or on the ground that the mortgage debt has not been completely discharged, or on both]

Mortgagor entitled to decree for redemption though time fixed by mortgage has not arrived or debt has not been paid
Power of Court to name some future date for payment by the mortgagor

²[15AA. So far as it may be consistent with the provisions of this Act every decree for redemption or foreclosure of any mortgage, and every decree or order for the sale of any mortgaged property made at the instance of a mortgagee thereof, shall name such future day, not being less than six months after the date of such decree, as the Court may think reasonable for the payment by the mortgagor of the money payable under the decree, and no such foreclosure shall be made absolute nor shall any such sale take place before the day so named]

¹[15B. (1) The Court may in its discretion, in passing a decree for redemption, foreclosure or sale in any suit of the descriptions mentioned in section 3, clause (y) or clause (z), or in the course of any proceedings under a decree for redemption, foreclosure or sale passed in any such suit, whether before or after this Act comes into force, direct that any amount payable by the mortgagor under that decree shall be payable in such instalments, on such dates and on such terms as to the payment of interest, and, where the mortgagee is in possession as to the appropriation of the profits and accounting therefor as it thinks fit

Power to order payment by instalments in case of decree for redemption foreclosure or sale

(2) If a sum payable under any such direction is not paid when due the Court shall except for reasons to be recorded by it in writing, instead of making an order for the sale of the entire property mortgaged or for foreclosure order the sale of such portion only of the property as it may think necessary for the realisation of that sum]

³[3] In passing a decree for redemption or foreclosure in any such suit as aforesaid the Court may direct that the amount payable by the mortgagor shall be discharged by continuing the mortgagee in possession

Power to continue the mortgagee in possession

¹ Ss 15A and 15B ins by s 6 of the Dekkhān Agriculturists' Relief Act, 1895 (22 of 1895)

² S 15AA ins by s 8 of the Dekkhān Agriculturists' Relief Act, 1895 (6 of 1895)

³ Sub-sections (3) and (4) of s 15B ins by s 9 *ibid*

(Chapter III—Of Suits and other Proceedings to which Agriculturists are parties)

sion for such further period as will enable him to recover his principal with reasonable interest, and that on the expiry of such period the property mortgaged shall be restored to the mortgagor

(4) When the amount payable to a mortgagee in possession has been determined in any such suit as aforesaid, the Court may in its discretion, instead of making an order for payment thereof, direct that the mortgagee be continued in possession for such period (to be specified by the Court) as will, in the opinion of the Court, be sufficient to enable him to recover from the profits the amount payable by the mortgagor together with reasonable interest, and that on the expiry of such period the property mortgaged shall be restored to the mortgagor]

Power to order payment by instalments in suits for possession of mortgaged property

¹[15C. (1) The Court may, if it thinks fit, in any suit for the possession of mortgaged property under section 3, clause (y), instead of passing a decree for possession of that property, pass a decree directing that the amount payable by the mortgagor shall be payable in such instalments, on such dates and on such terms as to the payment of interest, and as to the appropriation of the profits and accounting therefor, as it thinks fit

(2) If a sum payable under any such direction is not paid when due, the Court may, if it thinks fit instead of making any other order which it is empowered to make for the realisation of that sum, make an order directing that the mortgagee be put in possession of the whole or any portion of the property mortgaged]

Mortgagor may sue for account.

¹[15D. (1) Any agriculturist whose property is mortgaged may sue for an account of the amount of principal and interest remaining unpaid on the mortgage and for a decree declaring that amount

(2) When any such suit is brought, the amount (if any) remaining unpaid shall be determined under the same rules as would be applicable under this Act if the mortgagee had sued for the recovery of the debt

(3) At any time before the decree in the suit is signed, the plaintiff may apply to the Court to pass a decree for the redemption of the mortgage or the mortgagee if he would then have been entitled to sue for foreclosure or sale, may apply to the Court to pass a decree for foreclosure or sale (as the case may be) instead of a decree merely declaring the amount remaining unpaid and the Court may if it thinks fit grant the application

(Chapter III—Of Suits and other Proceedings to which Agriculturists are parties)

(4) The provisions of section 10B shall apply to any decree passed under sub section (3)]

16 Any agriculturist may sue for an account of money lent or advanced to or paid for him by a creditor or due by him to the creditor as the price of goods sold, or on a written or unwritten engagement for the payment of money and of money paid by him to the creditor and for a decree declaring the amount if any still payable by him to the creditor

Agriculturist-debtors may sue for accounts

When any such suit is brought the amount (if any) payable by the plaintiff shall be determined under the same rules as would be applicable under this Act if the creditor had sued him for recovery of the debt

Amount of debts in such cases to be determined according to foregoing provisions

17 A decree passed under section 16 may besides declaring the amount due, direct that such amount shall be paid by instalments with or without interest, and when any such decree so directs the plaintiff may pay the amount of such decree or the amount of each instalment fixed by such decree as it falls due into Court in default whereof execution of the decree may be enforced by the defendant in the same manner as if he had obtained a decree in a suit to recover the debt

Decree under section 16 may provide for payment by instalments

18 The plaintiff in any suit instituted under section 16 may at any stage of such suit deposit in Court such sum of money as he considers a satisfaction in full of the defendant's claim against him

Execution of decrees under this section Payment into Court in cases under section 16

Notice of the deposit shall be given by the Court to the defendant and the amount of the deposit shall (unless the Court otherwise directs) be paid to the defendant on his application

No interest shall be allowed to the defendant on any sum so deposited from the date of the receipt of such notice whether the sum deposited be in full of the claim or fall short thereof.

19 [Power to discharge judgment debtor Power to direct institution of insolvency proceedings] Rep by the Dekkhan Agriculturists Relief Act 1895 (VI of 1895) s 3

20 The Court may at any time direct that the amount of any decree passed whether before or after this Act comes into force against an agriculturist or the portion of the same which it directs under section 19 to be paid shall be paid by instalments with or without interest

Power to fix instalments in execution

21 No agriculturist shall be arrested or imprisoned in execution of a decree for money ¹[passed whether before or after this Act comes into force]

Arrest and imprisonment in execution of decree for money abolished

(Chapter III —Of Suits and other Proceedings to which Agriculturists are parties)

Immoveable property exempted from attachment and sale unless specifically pledged

22 ¹[Immoveable property belonging to an agriculturist ²* * * shall not be attached or sold] in execution of any decree or order ³[passed whether before or after this Act comes into force], unless it has been specifically mortgaged for the repayment of the debt to which such decree or order relates, and the security still subsists ⁴[For the purposes of any such attachment or sale as aforesaid, standing crops shall be deemed to be moveable property]

But the Court, ⁵[on application or of its own motion], may, when passing a decree against an agriculturist or ⁶[in the course of any proceedings under a decree against an agriculturist passed whether before or after this Act comes into force], direct the Collector to take possession for any period not exceeding seven years, of any such property of the judgment debtor to the possession of which he is entitled, and which, in the opinion of the Collector is not required for his support and the support of the members of his family dependent on him and the Collector shall thereupon take possession of such property and deal with the same for the benefit of the decree holder in manner provided by section 29

The provisions of section 31 shall *mutatis mutandis*, apply to any property so dealt with

Power of Collector to set aside sale

⁷[22A (1) When any immoveable property belonging to an agriculturist has been sold by public auction under the provisions of section 325 of the ⁸Code of Civil Procedure the sale may within thirty days from the date of the auction be set aside by the Collector if he considers the price bid by the purchaser to be inadequate

(2) When the sale is so set aside the purchaser shall be entitled to receive back his deposit or his purchase money, as the case may be and the Collector may re-sell the property by public auction or private contract, as he thinks fit Every such re-sale shall be deemed to be a sale under the provisions of section 325 of the ⁸Code of Civil Procedure]

Chapter not to apply to Village Munsifs Courts

23 No provision of this Chapter shall apply to the proceedings in the Courts of Village munsifs unless such provision has been specially extended thereto under the power hereinafter conferred

¹ S 1 s 1 y s 7 of the Dekkhan Agriculturists' Relief Act 1886 (23 of 1886) for No Agriculturist's immoveable property shall be attached or sold

² The words other than his standing crops rep by s 10 of the Dekkhan Agriculturists' Relief Act 1895 (6 of 1895)

³ Ins 1 y s 9 (1) of the Dekkhan Agriculturists' Relief Act 1882 (22 of 1882)

⁴ Ins 1 y s 10 of the Dekkhan Agriculturists' Relief Act 1895 (6 of 1895)

⁵ Ins 1 y s 9 (*) of the Dekkhan Agriculturists' Relief Act 1882 (22 of 1882)

⁶ Subs by s 9 (3) *ib id* for or at any subsequent time

⁷ S 22A ins by s 3 of the Dekkhan Agriculturists' Relief (Amendment) Act 1907 (Dom 2 of 1907)

⁸ See now the Code of Civil Procedure 1908 (5 of 1908) Sch III

(Chapter II —Of Insolvency.)

CHAPTER IV

OF INSOLVENCY

24 Every Subordinate Judge shall have the powers conferred by Subordinate sections 344 to 359 (both inclusive) of the ²Code of Civil Procedure, as Judges modified by the provisions next hereinafter contained for the purpose to have jurisdiction of dealing with applications under the ²Code of Civil Procedure or under in agricul this Act to have agriculturists residing within the local limits of his turists ordinary jurisdiction declared insolvent and proceedings taken under cases orders passed under the second clause of section 19 and except as provided in Chapter VII of this Act no such application or proceeding shall be dealt with by any other Court

25 Any agriculturist whose debts (if any) amount to fifty rupees or upwards may apply to any Subordinate Judge within the local limits of who e ordinary jurisdiction he resides to be declared an insolvent adjudica though he has not been arrested or imprisoned, and though no order of tion in cases not attachment has issued against his property in execution of a decree provided for by Code

26 Notwithstanding anything contained in section 351 of the ²Code Modification of section 351 of the Code of Civil Procedure the Court shall declare an agriculturist an insolvent if it is satisfied that he is in insolvent circumstances and that the appli cation to have him declared an insolvent has been properly made under section 344 of the said ²Code or section 25 of this Act

27 No person other than the nazir of the Court shall be appointed Receiver as receiver, and no receiver shall be entitled to commission

28 In determining under section 352 of the said ²Code the amount Proof of debts of any claim of the nature referred to in section 12 of this Act due by an insolvent agriculturist the Court shall proceed in the manner prescribed by sections 12 to 15 of the Act both inclusive

29 No immoveable property of the insolvent shall vest in the Immoveable receiver but the Court ³[on application or of its own motion] may property not to vest direct the Collector to take into his possession for any period not ex in receiver ceeding seven years from the date on which the receiver has been ap but may be pointed any immoveable property to the possession of which the insol managed for benefit vent is entitled and which in the opinion of the Collector is not of creditors required for the support of the insolvent and the members of his family dependent on him and subject to any rules the ⁴[Provincial Govern

¹ The Provincial Insolvency Act 1920 (5 of 1920) does not apply to cases to which this Chapter is applicable see s 82 of that Act

² Rep by the Code of Civil Procedure (14 of 1882) For corresponding provisions see the Provincial Insolvency Act 1920 (5 of 1920)

³ Ins by s 10 of the Dekhan Agriculturists Relief Act 1882 (22 of 1882)

⁴ Subst by the A O for I G

(Chapter IV —Of Insolvency)

ment] may from time to time make in this behalf, to manage the same for the benefit of the creditors by letting it on lease or otherwise

Provided that, if the insolvent or his representative in interest at any time pays into Court the balance of the scheduled debts then unpaid, he shall, subject to any rights created in favour of other persons by the Collector, be entitled to recover possession of such property

A Collector managing property under this section shall during the management have all the powers which the owner might as such have legally exercised, and shall receive and recover all rents and profits of such property, and for the purpose of recovering such rents and profits shall have, in addition to any powers possessed by an owner, all powers possessed by a Collector for securing and recovering the land revenue due to Government except the powers mentioned in the Bombay Land-revenue Code, 1879, section 150, clauses (b), (d) and (e)

Nothing in this section shall authorise the Court to direct the Collector to take into his possession any houses or other buildings belonging to and occupied by an agriculturist

30 When any scheduled debt is secured by a mortgage of any portion of the insolvent's immoveable property, the Court, ¹[on application or of its own motion], may direct the Collector, if he can obtain a premium equal to the amount of such debt by letting such property for a term not exceeding twenty years, to let such property, and, if he cannot so obtain such premium, to sell such property under section 325 of the ²Code of Civil Procedure

Where property is let under this section the premium shall be applied to the payment of the debt, and the rent, if any, shall for a period of seven years from the date of such letting be paid to the receiver and thereafter to the insolvent or his representative in interest

When property is sold under this section, the sale-proceeds shall be applied, first to the payment of the debt, and the balance, if any, shall be paid to the receiver

31 So long as any management under section 29 or letting under section 30 continues the insolvent and his representative in interest shall be incompetent to mortgage, charge, lease or alienate the property managed or let, or any part thereof

32 When the balance available for distribution among the scheduled creditors under ³section 356 of the said Code has been distributed, the claims of such creditors shall be deemed to have been discharged, except

¹ Ins. by s. 10 of the Dekkhan Agriculturists' Relief Act, 1882 (22 of 1882)

² See now the Code of Civil Procedure, 1908 (5 of 1908) Sch. III, para. 9

³ See now the Provincial Insolvency Act, 1920 (5 of 1920), s. 61 (4)

Secured
debts

Insolvent
incompetent
to sell etc
property
dealt with
under sec-
tions 29
and 30
Schedule
debts
discharged

Bo
18

X

(Chapter IV—Of Insolvency Chapter V—Of Village munsifs)

as regards the right to share in the profits of any property managed by the Collector under section 29 or let by him under section 30

33 No appeal shall lie from any order passed under this Chapter except orders passed in exercise of the power conferred by section 359 of the Code of Civil Procedure Appeals barred

CHAPTER V

OF VILLAGE MUNSIFS

34 The ²[Provincial Government] may from time to time appoint any Patel of a village or any other person possessing local influence in a village to be a Village munsif for such village or for such village and for any other villages the sites of which are situate in the same district not more than two miles from the site of such village and may cancel any such appointment Appointment of Village munsifs

35 Every Village munsif so appointed shall take cognizance of suits of the description mentioned in section 3 ³[clauses (u) and (x)] when the subject matter thereof does not exceed ⁴[twenty five] rupees in amount or value and all the defendants at the time of the commencement of the suit actually and voluntarily reside or carry on business or personally work for gain within the local area for which such Village munsif is appointed Suits triable by them

Notwithstanding anything hereinbefore contained a suit cognizable by a Village munsif shall not be heard by any other Court Jurisdiction of other Courts excluded

Provided that the District Judge may from time to time transfer any suit instituted before a Village munsif to his own Court or any other Civil Court in the district for trial Proviso

Provided also that no Village munsif shall try any suit to or in which he is a party or is personally interested or shall adjudicate upon any proceeding connected with or arising out of such suit

36 The District Judge may on a petition being presented within thirty days from the date of any decree or order of a Village munsif by any party deeming himself aggrieved by such decree or order set aside such decree or order on the ground of corruption gross partiality or misconduct of the Village munsif ⁵[or on the ground that the Village munsif has exercised a jurisdiction not vested in him by law] and pass such other decree or order as he thinks fit District Judge's power of review

¹ Rep. by the Code of Civil Procedure (14 of 1882)

² Subs. by the A. O. for L. G.

³ Sub. by the Dekkhan Agriculturists Relief (Amendment) Act 1977 (Bomb. 7 of 1977) s. 2 for clause (w)

⁴ Subs. by s. 2 ibid. for ten

Ins. by s. 11 of the Dekkhan Agriculturists Relief Act 1895 (6 of 1895)

(Chapter V —Of Village munsifs Chapter VI —Of Conciliation)

Except as provided in this Act and in section 622 of the ¹Code of Civil Procedure every decree and order of a Village munsif shall be final

Power of
Provincial
Government
to make
rules

37 The ²[Provincial Government] may from time to time by notification in the Official Gazette make rules consistent with this Act for regulating the procedure of Village munsifs and for conferring on them or any of them all or any of the powers for the trial of suits or the execution of decrees exercised by a Civil Court under the ¹Code of Civil Procedure or any other enactment for the time being in force

CHAPTER VI

OF CONCILIATION

Appoint-
ment of
Concilia-
tors

38 The ²[Provincial Government] may from time to time, appoint any person other than an officer of Police to be a Conciliator and may cancel any such appointment

Every Conciliator appointed under this section shall be appointed only for a term not exceeding three years but may, on the expiration of the period for which he has been appointed, be again appointed for a further term not exceeding three years

Every Conciliator so appointed shall exercise his functions under this Act in respect of matters affecting agriculturists residing within such local area as the ²[Provincial Government] may from time to time, prescribe

³[The expression officer of Police in this section shall not be deemed to include a Police patel appointed under Bombay Act No VIII of 1867 (*for the Regulation of the Village police in the Presidency of Bombay*)]

Matters
which may
be brought
before Con-
ciliator

39 When any dispute arises as to, or there is a prospect of litigation regarding, any matter within the cognizance of a Civil Court between two or more parties one of whom is an agriculturist residing within any local area for which a Conciliator has been appointed, or when application for execution of any decree in any suit to which any such agriculturist is a party and which was passed before the date on which this Act comes into force is contemplated, any of the parties may apply to such Conciliator to effect an amicable settlement between them

¹ See now the Code of Civil Procedure 1908 (Act 5 of 1908) s 115

² Said by the A O for I G

³ Ins by s 7 of the Dekkhan Agriculturists Relief Act 1861 (23 of 1861)

(Chapter VI — Of Conciliation)

40 If the application be made by one of the parties only, the Conciliator shall take down, or cause to be taken down, in writing a concise statement of the applicant's case, and shall thereupon, by summons or by such other means as he deems fit, invite the person against whom such application is made to attend before him at a time and place to be fixed for this purpose, and shall direct the applicant also to be present at such time and place

Procedure thereupon

If such person fails to appear at the time first fixed, the Conciliator may, if he thinks fit, from time to time extend the period for his appearance

Day for attendance may from time to time be postponed

¹[A Conciliator empowered by the ²[Provincial Government] in this behalf may, instead of inviting, direct the person against whom the application is made to attend at the time and place either first or subsequently fixed

If an applicant, or a person against whom an application is made, fails to be present or attend at the time and place specified in a direction proceeding from a Conciliator under this section, he shall be deemed to have committed an offence under section 174 of the Indian Penal Code]

41 Whenever all the parties are present, the Conciliator shall call upon each in turn to explain his case regarding the matter in question, and shall use his best endeavours to induce them to agree to an amicable settlement or to submit such matter to arbitration

When all parties appear, Conciliator to endeavour to reconcile them

42 The Conciliator shall hear but shall not record the statement of any witness, and shall peruse any book of account or other document produced by the parties, or so much thereof as may be necessary, and if any party or witness consents in writing to affirm any statement upon oath in any form not repugnant to justice or decency and not purporting to affect any third person, shall provide for such oath being duly taken in the presence of all the parties

Conciliator to hear statements of witnesses, etc.

43 If on the day on which the case is first heard by the Conciliator, or any subsequent day to which he may adjourn the hearing, the parties come to any agreement, either finally disposing of the matter or for referring it to arbitration, such agreement shall be forthwith reduced to writing, and shall be read and explained to the parties, and shall be signed or otherwise authenticated by the Conciliator and the parties respectively

Any agreement arrived at to be reduced to writing

¹ Ins. by s. 8 of the Dekkhān Agriculturists' Relief Act, 1836 (23 of 1836)

² Subs. by the A. O. for 'L. G.'

(Chapter VI—Of Conciliation)

Explanation—A Conciliator may be appointed arbitrator under this section

Procedure
when
agreement
finally
disposes
of case
and in
other circum-
stances

¹[44 (1) When the agreement is one finally disposing of the matter, the Conciliator shall forward the same in original to the Court of the Subordinate Judge of lowest grade having jurisdiction in the place where the agriculturist who is a party thereto resides, and shall at the same time deliver to each of the parties a written notice to show cause before such Judge, within one month from the date of such delivery, why such agreement ought not to be filed in such Court

(2) The Court which receives the agreement shall in all cases scrutinise the same, and if it thinks that the agreement is a legal and equitable one finally disposing of the matter, and that it has not been made in fraud of the stamp or registration laws, it shall, after the expiry of the said period of one month, unless cause has been shown as aforesaid, order such agreement to be filed, and it shall then take effect as if it were a decree of the said Court passed on the day on which it is ordered to be filed and from which no appeal lies

(3) If the said Court thinks that the agreement is not a legal or equitable one, or that it does not finally dispose of the matter, or that it has been made in fraud of the stamp or registration laws, it shall of its own motion issue process for the attendance of the parties, and if after such inquiry as may be deemed necessary the Court finds that such agreement is a legal and equitable one finally disposing of the matter, and that it has not been made in fraud of the stamp or registration laws, it shall order such agreement to be filed, and it shall then take effect as if it were a decree of the said Court passed on the day on which it is ordered to be filed and from which no appeal lies

(4) If, on the other hand, the said Court finds that the agreement does not constitute a legal or equitable agreement, or that it does not finally dispose of the matter, or that it has been made in fraud of the stamp or registration laws, it shall return the said agreement to the Conciliator, and such Conciliator shall thereupon be bound to furnish on demand to the parties or any one of them a certificate under section 46

(5) The Court may in any case, for reasons to be recorded by it in writing, from time to time extend the period of one month allowed for showing cause under this section]

¹ Subs by s 12 of the Dekkhan Agriculturists' Relief Act, 1895 (6 of 1895), for the original section

(Chapter VI—Of Conciliation)

45 When the agreement is one for referring the matter to arbitration, the Conciliator shall forward it to the Court having jurisdiction in the matter, and such Court shall cause it to be filed and proceed thereon in manner provided by sections 523 and 524 of the ¹Code of Civil Procedure

Procedure where agreement is for reference to arbitration

46 If the person against whom any application is made before a Conciliator cannot after reasonable search be found or if he refuses or neglects, after a reasonable period has been allowed for his appearance, to appear before the Conciliator, or if he appears but the endeavour to induce the parties to agree to an amicable settlement or to submit the matter in question to arbitration fails, the Conciliator shall on demand give to the applicant, or when there are several applicants to each applicant a certificate under his hand to that effect

Certificate to be given to applicant if conciliation fails

47 No suit, and no application for execution of a decree passed before the date on which this Act comes into force, to which any agriculturist residing within any local area for which a Conciliator has been appointed is a party, shall be entertained by any Civil Court unless the plaintiff produces ²[a certificate in reference thereto obtained by him under section 46 within the year immediately preceding]

Suit or application for execution, not to be entertained by Civil Court unless such certificate is produced

³[*Explanation*—The expression Civil Court in this section does not include a Mamlatdar's Court under Bombay Act No III of 1876⁴ (to consolidate and amend the law relating to the powers and procedure of Mamlatdar's Courts)]

such certificate is produced

⁵[48 In computing the period of limitation prescribed for any such suit or application the time intervening between the application made by the plaintiff under section 39 and the grant of the certificate under section 46 shall be excluded]

Allowance to be made in period of limitation

6* * * *

⁷48A [Repealed]

¹ See now the Code of Civil Procedure 1908 (Act 5 of 1908) Sch II rules 17 and 19

² Subs by s 13 of the Dekkhān Agriculturists Relief Act 1882 (22 of 1882) for such certificate as aforesaid in reference thereto

³ Ins by s 9 of the Dekkhān Agriculturists Relief Act 1881 (23 of 1881)

⁴ See now the Mamlatdars Courts Act 1906 (Bom 2 of 1906)

⁵ Subs by s 10 of the Dekkhān Agriculturists Relief Act 1881 (23 of 1881) for the original section

⁶ The second paragraph was rep by the Amending Act 1891 (12 of 1891)

⁷ S 48A, which was ins by the Bombay Repealing and Amending Act 1910 (Bom 1 of 1910) was rep by the Dekkhān Agriculturists Relief (Amendment) Act 1912 (Bom 1 of 1912) s 3

(Chapter VI—Of Conciliation Chapter VII—Superintendence and Revision)

Provincial
Government
to make
rules

49 The ¹[Provincial Government] may from time to time make rules—

- (a) regulating the procedure before Conciliators in matters not provided for by this Act,
- (b) fixing the charges to be made by Conciliators for anything done by them under this Chapter, and
- (c) determining what record and accounts shall be kept by Conciliators, and what returns shall be framed and furnished by them

CHAPTER VII

SUPERINTENDENCE AND REVISION

District
Judge to
inspect, etc

50 The District Judge shall inspect, supervise and control the proceedings, under ²[Chapter II, Chapter IV and Chapter VI] of this Act, of all Subordinate Judges and the proceedings of all Village munsifs and Conciliators

District
Judge may
withdraw
case from
Conciliator
or Subor-
dinate
Judge,

³[51 The District Judge may—

- (a) transfer any application pending before a Conciliator to the file of any other Conciliator,
- (b) ⁴[transfer from the Court of one Subordinate Judge to another any suit or any agreement pending before a Subordinate Judge under section 44 of this Act, or] transfer to his own file any suit or other matter pending before the Court of any Subordinate Judge under ⁵[Chapter II, Chapter IV or Chapter VI] of this Act, and may dispose of the same as if he were a Subordinate Judge, or
- (c) stay the proceedings in any such suit or matter, and sit together with such Judge as a Bench to dispose of such suit or matter in accordance with the provisions of this Act

or sit with
Subordinate
Judge as a
Bench for
trial of
any case

If the members of any Bench sitting under this section differ in opinion the opinion of the District Judge shall prevail]

¹ Subs by the A O for L G

² Subs by s 14 of the Dekkhan Agriculturists' Relief Act, 1882 (22 of 1882) for Chapter II and Chapter IV

³ Subs by s 11 of the Dekkhan Agriculturists' Relief Act 1891 (23 of 1891) for original section

⁴ Ins by s 13 of the Dekkhan Agriculturists' Relief Act 1895 (6 of 1895)

⁵ Subs by Act 22 of 1882 s 14 for Chapter II or Chapter IV

(Chapter VII—Superintendence and Revision)

1[52 (1) The 2[Provincial Government] may appoint an Assistant or Subordinate Judge to inspect and supervise, subject to the control of the District Judge, the proceedings of all Subordinate Judges under Chapter II, Chapter IV and Chapter VI of this Act, and of all Village munsifs and Conciliators in any district or part of a district to which this Act applies

Appointment of Assistant or Subordinate Judges to aid District Judge

Provided that if the 2[Provincial Government] thinks fit the same Assistant or Subordinate Judge may be so appointed for two or more such districts or parts of districts or districts and parts of districts

(2) The District Judge may, by order, confer upon any Assistant or Subordinate Judge appointed under this section as regards any district or part of a district for which he is so appointed, all or any of the powers specified in the order which vest in the District Judge under section 51]

53 The District Judge may, for the purpose of satisfying himself of the legality or propriety of any decree or order passed by a Subordinate Judge in any suit or other matter under 3[Chapter II Chapter IV or Chapter VI] of this Act and as to the regularity of the proceedings therein, call for and examine the record of such suit or matter, and pass such decree or order thereon as he thinks fit

Of revision

and any Assistant Judge or Subordinate Judge appointed by the 2[Provincial Government] under section 52 may similarly in any district for which he is appointed, call for and examine the record of any such suit or matter, and if he see cause therefor, may refer the same, with his remarks thereon to the District Judge, and the District Judge may pass such decree or order on the case as he thinks fit

Provided that no decree or order shall be reversed or altered for any error or defect or otherwise unless a failure of justice appears to have taken place

54 The 2[Provincial Government] from time to time may 4* * * * * appoint an officer as Special Judge to discharge in the place of the District Judge all the functions of the District Judge under this Act in respect of the proceedings of all Subordinate Judges Village munsifs and Conciliators and may cancel any such appointment

Special Judge

1 Subs. by s. 14 of the Dekkhan Agriculturists' Relief Act 1895 (6 of 1895) for the original section

2 Subs. by the A. O. for L. G.

3 Subs. by s. 14 of the Dekkhan Agriculturists' Relief Act 1882 (22 of 1882) for Chapter II or Chapter IV

4 The words "and if the G. of I. so direct shall" rep. by s. 2 and Sch. I of the Devclution Act 1900 (38 of 1900)

(Chapter VII — Superintendence and Revision Chapter VIII —
Registration by Village Registrars)

Such Special Judge shall not, without the previous sanction of the ¹[Provincial Government], discharge any public function except those which he is empowered by this Act to discharge

If any conflict of authority arises between the Special Judge and the District Judge the High Court shall pass such order thereon consistent with this Act as it thinks fit

No appeal shall lie from any decree or order passed by the District Judge under this Chapter, or by the Special Judge, or by an Assistant or Subordinate Judge appointed under section 52, or by a Bench, in any suit or proceeding under this Act

²[But the District Judge or Special Judge or any Assistant or Subordinate Judge or Bench, may refer to the High Court, under ³section 617 of the Code of Civil Procedure, any question of law, or usage having ^{xiv} the force of law, or the construction of a document, arising in any case pending before him or it under this Chapter as if that case were a suit or an appeal pending before him or it, and, in respect of every reference so made, ³sections 618 to 621 of the said Code, both inclusive, shall apply

Provided that no reference shall be made under this section by any Assistant or Subordinate Judge or by any Bench of which the District Judge or Special Judge is not a member, without the previous sanction of the District Judge or Special Judge, as the case may be]

CHAPTER VIII

REGISTRATION BY VILLAGE REGISTRARS

Appointment
of Village
registrars

55 The ⁴[Provincial Government] may from time to time —

(a) appoint such persons as it thinks fit, whether public officers or not to be Village registrars for such local areas as it may from time to time prescribe

(b) direct the Village registrar for any local area to discharge the functions of a Village registrar for any other local areas concurrently with the Village registrars of such other local areas, and

¹ Subs. by the A. O. for 'L. G.' which had been sub. by the Devolution Act 1920 (28 of 1920) s. 2 and Sch. I for 'G. of I.'

² Ins. by s. 15 of the Dekkhan Agriculturists' Relief Act 1882 (22 of 1882)

³ See now the Code of Civil Procedure 1908 (5 of 1908) s. 113 and Order 46 rules 1 to 5

⁴ Subs. by the A. O. for 'L. G.'

(Chapter VIII.—Registration by Village-registrars)

(c) delegate to any person, by name or in virtue of his office, the powers conferred on it by this section,

and may cancel any such appointment, direction or delegation

56 No instrument which purports to create, modify, transfer, evidence or extinguish an obligation for the payment of money or a charge upon any property, or to be a conveyance or lease, and which is executed after this Act comes into force by an agriculturist residing in any local area for which a Village-registrar has been appointed, shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon by any such person or by any public officer, unless such instrument is written by, or under the superintendence of and is attested by, a Village-registrar

Instruments executed by agriculturist not to be deemed valid unless executed before a Village registrar

Provided that nothing herein contained shall prevent the admission of any instrument in evidence in any criminal proceeding, ¹[or apply to any instrument which is executed by an agriculturist merely as a surety,] ²[or to any instrument required by section 17 of the ³Indian Registration Act, 1877, to be registered under that Act]

4[57. When any persons intend to execute any instrument to which section 56 applies, all such persons shall appear before the Village-registrar appointed for the area in which the agriculturist, or, when there are several agriculturists intending to execute the instrument, any one of such agriculturists, resides, and such registrar, after satisfying him self in such manner as he deems fit as to the identity of the intending executants and receiving the fee (if any) prescribed by the ⁵[Provincial Government] in this behalf, and the stamp (if any) which may be required by law, shall write the instrument, or cause the same to be written under his superintendence; and, after reading the same aloud, or causing it to be so read, in the hearing of the intending executants, shall require them to execute it in his presence

Such instruments to be written by, or under the superintendence of, a Village registrar and executed in his presence

Every instrument so written and executed shall at the time of execution be attested by the Village-registrar, and also, if any of the executants thereof is unable to read such instrument, by two respectable witnesses.

Attestation of such instruments

¹ Ins by s 12 of the Dekkhan Agriculturists' Relief Act, 1881 (23 of 1881)

² Ins by s 9 of the Dekkhan Agriculturists' Relief Act, 1886 (23 of 1886)

³ See now the Indian Registration Act, 1908 (16 of 1908)

⁴ Subs by s 13 of Act 23 of 1881 for original section

⁵ Subs by the A O for "L 4"

(Chapter VIII—Registration by Village registrars)

For the purposes of this section every executant of any such instrument shall appear in person before the Village registrar, but every other party thereto may appear either in person or by any agent, being his relative servant or dependent, whom he has duly furnished with a power of attorney, ¹[executed and authenticated in such manner as the ²[Provincial Government] may, from time to time, by rule prescribe,] authorizing him to appear and act on his behalf]

Registration
of instru-
ments by
Village
registrars

58 Every Village registrar shall keep a register of instruments executed before him in such form as shall, from time to time, be prescribed by the Inspector General of Registration

As soon as all the ³[intending executants have executed any instrument] before a Village registrar, he shall make a copy of it or cause a copy of it to be made in his register, and shall deliver the original instrument to the party entitled to the custody of the same 4* * * *

Previous to delivery, the original instrument 5* * * * shall be endorsed under the Village registrar's signature, with the date of registration, the name and residence of the Village registrar, and the volume and page of the register in which the instrument has been registered

⁶[A certified copy of any entry in the register shall be granted by the Village registrar, free of charge, on the application of any party to the instrument to which the entry relates, or of his agent or representative and the copy shall be admissible as evidence of the contents of the instrument]

Considera-
tion to be
fully stated
in every
instrument
executed
before a
Village
registrar

59 In every instrument written by, or under the superintendence of the Village registrar, the amount and nature of the consideration, if any, shall be fully stated

The Village registrar shall also endorse upon the instrument a note under his hand, recording whether or not the transfer of the consideration stated therein or of any part thereof, took place in his presence

¹ Is by s 16 of the Dekkhan Agriculturists Relief Act, 1882 (22 of 1882)

² Subs by the A O for L G

³ Subs by s 14 of the Dekkhan Agriculturists Relief Act, 1881 (23 of 1881) for parties to any instrument have executed it

⁴ The words and a certified copy thereof to the other party, or to each of the other parties if there be more than one rep by s 10 (1) of the Dekkhan Agriculturists Relief Act 1886 (23 of 1886)

⁵ The words and each such copy rep by s 10 (2) *ibid*

⁶ Ins by s 10 (3) *ibid*

(Chapter VIII—Registration by Village-registrars)

If the instrument modifies, or wholly or partly supersedes, a previous instrument, such previous instrument shall be produced before the Village registrar and shall be fully described in the instrument to be executed, and shall be marked by the Village registrar under his hand for identification

Previous
instruments
to be
produced

¹[Provided that, if it is alleged that any such previous instrument is on the record or otherwise in the custody of a Court, or is lost, or has been destroyed, the Village-registrar, after ascertaining that such previous instrument was duly registered, may permit a certified copy thereof to be produced in lieu of the original, and in every such case the following procedure shall be observed, that is to say

Production
of copy of
previous
instrument
when to be
permitted

(a) the contents of the certified copy shall be fully described in the modifying or superseding instrument, and the said copy shall be marked by the Village registrar under his hand for identification, and shall then be delivered to the person who produced it

(b) if the previous instrument is lost, or has been destroyed, and the registered entry thereof is in his custody, the Village registrar shall endorse on such entry a note under his hand as to the modification or supersession of the said instrument,

(c) if the previous instrument is in the custody of a Court, or if it is lost, or has been destroyed, and the registered entry thereof is in the custody of another officer, the Village-registrar shall forward a certified copy of the entry in his register relating to the modifying or superseding instrument to such Court or officer with a report explaining the circumstances, and such Court or officer shall on receipt thereof endorse on such previous instrument or registered entry a note as to the modification or supersession of the said instrument]

60 Every instrument executed and registered in accordance with the foregoing provisions shall be deemed to have been duly registered under the provisions of the ²Indian Registration Act, 1877, and no instrument which ought to have been executed before a Village registrar but has been otherwise executed shall be registered by any officer acting under the said Act, or in any public office, or shall be authenticated by any public officer

Registration
under this
Act to be
deemed
equivalent
to registra-
tion under
Indian
Registration
Act, 1877

¹ Proviso inserted by s. 3 of the Dekkhan Agriculturists' Relief Act 1902 (Bom 1 of 1902)

² See now the Indian Registration Act, 1908 (16 of 1908)

*(Chapter VIII—Registration by Village registrars Chapter VIIIA—
Registration of Instruments referred to in Section 17 of the
Indian Registration Act, 1877)*

Superintendence of Village registrars and custody and destruction of their records

¹[61 (1) The ²[Provincial Government] may appoint one or more officers to exercise by themselves or their subordinates a general superintendence over all Village registrars, and may either make rules, or empower such officer or officers to make rules from time to time, consistent with this Act, for regulating the proceedings of the Village registrars and for providing for the custody of their records

(2) The ²[Provincial Government] may, by order to be published in the ³[Official Gazette], declare that any documents other than wills remaining unclaimed in any registration office in any district or part of a district to which this Act applies for a period exceeding two years, may be destroyed]

Exemption of instruments to which the Crown or any officer of the Crown is a party Power of Provincial Government to make rules

62 Nothing in this Act shall be deemed to require any instrument, to which ⁴[the Crown] or any officer ⁵[of the Crown] in his official capacity is a party to be executed before a Village registrar^{6*} * *

63 The ²[Provincial Government] may, from time to time, make rules regulating the appointment suspension, dismissal and remuneration of Village registrars and prescribing the fees to be levied by them

7[CHAPTER VIIIA

REGISTRATION OF INSTRUMENTS REFERRED TO IN SECTION 17 OF THE 8INDIAN REGISTRATION ACT, 1877

Mode of execution by agriculturists of instruments

63A (1) When an agriculturist intends to execute any instrument required by section 17 of the ⁸Indian Registration Act, 1877, to be ^{III}registered under that Act, he shall appear before the Sub registrar

¹ Subs. by s. 15 of the Dekkhan Agriculturists Relief Act 1895 (6 of 1895) for original s. 61

² Subs. by the A. O. for L. G.

³ Subs. by the A. O. for Govt. Gazette

⁴ Subs. by the A. O. for the Govt.

⁵ Subs. by the A. O. for of Govt.

⁶ The words "or any Society registered under the Co-operative Credit Societies Act 1904" which were ins. by the Bombay Repealing and Amending Act 1910 (Bom. 1 of 1910) were rep. by the Dekkhan Agriculturists Relief (Amendment) Act 1912 (Bom. 1 of 1912) s. 3

⁷ Ch. VIIIA ins. by the Dekkhan Agriculturists Relief Act 1886 (23 of 1886) s. 11

⁸ See now the Indian Registration Act 1908 (16 of 1908)

(Chapter VIII 1 —Registration of Instruments referred to in section 17 of the Indian Registration Act 1877 Chapter IX —Of Receipts and Statements of Account)

within whose sub district the whole or some portion of the property to which the instrument is to relate is situate and the Sub registrar shall write the instrument, or cause it to be written and require it to be executed and attest it and if the executant is unable to read the instrument cause it to be further attested, and otherwise act in accordance with the procedure prescribed for a Village registrar by sections 57 and 59 of this Act and shall then register the instrument in accordance with the provisions of the Indian Registration Act 1877

required to be registered under Act III of 1877

(2) An instrument to which sub section (1) applies shall not be effectual for any purpose referred to in section 49 of the Act last mentioned unless it has been written executed and attested in the manner provided in that sub section 2* . . .]

CHAPTER IX

OF RECEIPTS AND STATEMENTS OF ACCOUNT

64 The person to whom any agriculturist makes any payment of money in liquidation of a debt shall at the time of such payment, tender to such agriculturist whether he demand the same or not a written receipt for the amount of such payment

Agriculturists entitled to written receipts

If such payment is made under any instrument executed before a Village registrar, the receipt shall if the agriculturist so require be endorsed on the copy of the instrument furnished to him under section 58

¹ See now the Indian Registration Act 1908 (16 of 1908)

² The words Sub section (1) shall not apply to any instrument to which any Society registered under the Cooperative Credit Societies Act 1904 as a party which were ins by the Bombay Repealing and Amending Act 1910 (Bom 1 of 1910) have been rep by the Dakhlan Agriculturists Relief (Amendment) Act 1912 (Bom 1 of 1912) s 3

(Chapter IX —Of Receipts and Statements of Account Chapter X —
Legal Practitioners)

Agriculturists
entitled
to annual
statements
of account

65 Any agriculturist by whom any money is due under any instrument shall, on such date in each year as the ¹[Provincial Government], having regard to local custom, may from time to time, by notification in the Official Gazette, fix, be entitled to receive, on demand, from the person claiming under such instrument, a statement up to that date of his account under such instrument

Agriculturists
entitled
to have
account
made up
from time
to time in
a pass book

66 Any agriculturist in whose name an account is kept by any trader or money lender shall be entitled to receive from such trader or money lender, on demand, a pass book and to require, from time to time, that his account up to date be written therein and authenticated by the signature or mark of the said trader or money-lender

An entry so made in any such pass book of any payment made to the trader or money lender shall be deemed to be equivalent, for the purposes of section 64, to the grant of a receipt for the amount so entered

No person whose account has been written in a pass book as required by this section shall be entitled also to demand an account under section 65

Penalty for
contraven-
tion of sec-
tions 64
to 66

67 Any person who in contravention of section 64, 65 or 66, refuses or neglects to tender a receipt or a statement of account or a pass book or to write, or cause to be written, any account or any part of an account in a pass book or to attest the same when so written, shall be punished for each such offence with fine which may extend to one hundred rupees

CHAPTER X

LEGAL PRACTITIONERS

Pleaders,
etc.,
excluded
in certain
cases

²[68 No pleader, vakil or mukhtar, and no advocate or attorney of a High Court, shall be permitted to appear on behalf of any party to any case before a Conciliator or a Village munsif ³* * * * *

Provided that any party to any such case may be permitted, on reasonable cause being shown to the satisfaction of the Conciliator or Village munsif, to employ any relative, servant or dependent who is

¹Subs by the A O for L G

²Subs by s 15 of the Dekkhan Agriculturists Relief Act, 1881 (23 of 1881), for the original s 68

³The words the subject matter whereof does not exceed in amount or value one hundred rupees rep by s 17 of the Dekkhan Agriculturists Relief Act 1882 (22 of 1882)

(Chapter X—Legal Practitioners Chapter XI—Miscellaneous)

not, and has not previously been, a pleader, vakil or mukhtar, or an advocate or attorney of a High Court, to appear either conjointly with, or in lieu of, such party

When a relative, servant or dependent appears in lieu of a party, he shall be furnished by him with a power of attorney defining the extent to which he is empowered to act]

69 When in any suit or proceeding before a Subordinate Judge under this Act to which an agriculturist is a party, any pleader, vakil or mukhtar, or any advocate or attorney of a High Court, appears on behalf of any party opposed to such agriculturist, the Subordinate Judge, if he is of opinion that such agriculturist has not the means of obtaining proper professional assistance, may, with the consent of such agriculturist direct the Government pleader or any other fit person (who is willing so to do) to appear on his behalf

Powe of Court to appoint pleade for agri culturist

CHAPTER XI

MISCELLANEOUS

70 No mortgage, lien or charge of or upon any immoveable property belonging to an agriculturist shall be valid unless it is created by an instrument in writing under the hand of the person creating such mortgage, lien or charge

Mortgages etc to be valid only when written

Nothing in this section shall apply to any mortgage, lien or charge created by mere operation of law, or in favour of the Government or of any officer of the Government in his official capacity

[71 The last clause of section 258 of the Code of Civil Procedure shall not apply to payments out of Court made in any proceeding under this Act in any case where an acknowledgment by the judgment creditor for the same is produced or when the payment is either admitted by him or proved]

Bar of application of section 258 Act XIV, 1882

[71A In taking an account under section 13 or any suit under this Act where interest is chargeable, such interest shall be awarded at the following rates —

Rate of interest allowable on taking an account

- (a) the rate, if any, agreed upon between the parties or the persons (if any) through whom they claim, unless such rate is deemed by the Court to be unreasonable, or

1 S 71 was ins by s 16 of the Dekkhan Agriculturists Relief Act 1895 (6 of 1895) The original s 71 (which was rep ly Act 23 of 1881) related to registration of mortgages executed before the passing of the Act

2 See now the Code of Civil Procedure 1908 (5 of 1908) Order 21 rule 2

*S 71A ins by s 17 of Act 6 of 1895

(Chapter XI—Miscellaneous)

- (b) if such rate is deemed by the Court unreasonable, or if no rate was agreed upon, or, when any agreement between the parties or the persons (if any) through whom they claim to set off profits against interest and assessment and similar charges without an account has been set aside by the Court, such rate as the Court may deem reasonable]

limitation

¹[72 In any suit ²[of the description mentioned in section 3, clause (iv),] for the recovery of money from a person ³* * * who at the time when the cause of action arose was an agriculturist ⁴[in any of the districts of Poona, Sátara, Sholapur and Ahmednagar], the following periods of limitation shall be deemed to be substituted for those prescribed in the second column of the Second Schedule annexed to the ⁵Indian Limitation Act, 1877 (that is to say) —

XV o

- (a) when such suit is founded on a written instrument registered under this Act or any law in force at the date of the execution of such instrument—twelve years

- (b) in any other case,—six years

⁶[Provided that nothing in this section shall—

- (i) apply to a suit for the recovery of money from a person who is a surety merely of the principal debtor if the principal debtor was not at the time when the cause of action arose an agriculturist ⁷[in any of the districts aforesaid], or

- (ii) revive the right to bring any suit which would have been barred by limitation if it had been instituted immediately before this Act comes into force]]

¹ Subs by s 17 of the Dekkhan Agriculturists Relief Act 1881 (23 of 1881) for original s 72

² Subs by s 12 (1) of the Dekkhan Agriculturists Relief Act 1886 (23 of 1886) for under this Act

³ The words not being merely a surety for the principal debtor rep by s 12 (2) *ibid*

⁴ Ins by the Dekkhan Agriculturists Relief Act 1895 (6 of 1895) s 18

⁵ Rep by the Indian Limitation Act 1908 (9 of 1908)

⁶ Subs by s 12 (3) of the Dekkhan Agriculturists Relief Act 1886 (23 of 1886) for the original proviso

⁷ Ins by s 18 of Act 6 of 1895

(Chapter XI—Miscellaneous)

73 [Decision as to whether person is an agriculturist, final] Rep
by the Dekkhān Agriculturists' Relief Act, 1895 (VI of 1895), s 3

¹[73A. When the Collector has taken any immoveable property of a judgment-debtor or insolvent into his possession under section 22 or section 29, he may, by an order in writing, direct that any other such property not so taken shall be deemed to be reserved for the support of the judgment debtor or insolvent and the members of his family dependent on him, and may rescind that order

Certain agricultural produce exempted from attachment, etc

While any such order continues in force in respect of any immoveable property, agricultural produce grown on that property shall not be attached or sold in execution of a decree passed whether before or after this Act comes into force, and shall not vest in the receiver appointed in any insolvency proceedings]

74 Except in so far as it is inconsistent with this Act, the ²Code of Civil Procedure shall apply in all suits and proceedings before Subordinate Judges under this Act

²Code Civil Procedure Code to apply in Subordinate Judges Courts

³[74A. Except section 2 and section 21 the provisions of this Act shall not apply to any matter to or in which any society registered under the ⁴Co operative Credit Societies Act, 1904, is a party]

Co operative Credit Societies

75 The ⁵[Provincial Government] may, from time to time, make all such rules as it may deem necessary for carrying out the provisions herein contained

Additional power to make rules

76 All rules made by the ⁵[Provincial Government] under this Act shall be published in the Official Gazette, and shall thereupon, in so far as they are consistent with this Act, have the force of law

Rules to be published

¹ S 73A ins by s 18 of the Dekkhān Agriculturists Relief Act 1892 (22 of 1892)

² See now the Code of Civil Procedure 1908 (5 of 1908)

³ S 74A ins by s 1 of the Dekkhān Agriculturists Relief (Amendment) Act 1912 (Bom 1 of 1912)

⁴ See now the Co operative Societies Act, 1912 (2 of 1912)

⁵ Subs by the A O for L G "

THE LEGAL PRACTITIONERS ACT, 1879

CONTENTS

PREAMBLE

CHAPTER I

PRELIMINARY

SECTIONS

- 1 Short title
Commencement
Local extent
- 2 [*Repealed*]
- 3 Interpretation clause

CHAPTER II

OF ADVOCATES VAKILS AND ATTORNEYS

- 4 Advocates and Vakils
- 5 Attorneys of High Court

CHAPTER III

OF PLEADERS AND MUKHTARS

- 6 Power to make rules as to qualifications, etc., of pleaders and mukhtars
Publication of rules
- 7 Certificates to pleaders and mukhtars
- 8 Pleadors on enrolment may practise in Courts and revenue offices
- 9 Mukhtars on enrolment may practise in Courts
- 10 No person to practise as pleader or mukhtár unless qualified
Revenue agents may appear, plead and act in Munsifs Courts
in suits under Bengal Act VIII of 1869
- 11 Power to declare functions of mukhtars
- 12 Suspension and dismissal of pleaders and mukhtars convicted
of criminal offence

SECTIONS

- 13 Suspension and dismissal of pleaders and mukhtars guilty of unprofessional conduct
- 14 Procedure when charge of unprofessional conduct is brought in Subordinate Court or revenue office
 - Suspension pending investigation
- 15 Power to call for record in case of acquittal under section 14
- 16 Power to make rules for mukhtars on appellate side of High Court

CHAPTER IV

OF REVENUE AGENTS

- 17 Power to make rules as to qualifications etc of revenue agents
 - Publication of rules
- 18 Certificates to revenue agents
- 19 Enrolment of revenue agent
- 20 No person to act as agent in revenue offices unless qualified
- 21 Dismissal of revenue agent convicted of criminal offence
- 22 Suspension and dismissal of revenue agents guilty of unprofessional conduct
- 23 Procedure when revenue agent is so charged in subordinate office
- 24 Power to Chief Controlling Revenue authority to call for record

CHAPTER V

OF CERTIFICATES

- 25 Fee for certificates
- 26 Dismissed practitioners to surrender certificates

CHAPTER VI

OF THE REMUNERATION OF PLEADERS, MUKHTARS AND REVENUE-AGENTS

- 27 High Court and Chief Controlling Revenue authority to fix fees on civil and revenue proceedings
 - Exception as to agents mentioned in section 20
 - 28 to 31 [*Repealed*]
-

CHAPTER VII

PENALTIES

SECTIONS

- 32 On persons illegally practising as pleaders, mukhtars or revenue agents
 - 33 On suspended or dismissed pleader, etc , failing to deliver certificate
 - 34 On suspended or dismissed practitioner practising during suspension or after dismissal
 - 35 Revision of fines
 - 36 Power to frame and publish lists of touts
-

CHAPTER VIII

MISCELLANEOUS

- 37 Provincial Government to appoint examiners
 - 38 Exemption of High Court practitioners from certain parts of Act
 - 39 Suspension or dismissal of person holding mukhtár and revenue-agent's certificates
 - 40 Pleadors, etc , not to be suspended or dismissed without being heard
 - 41 *Power for certain High Courts to enrol advocates*
 - 42 [*Repealed*]
-

THE FIRST SCHEDULE —[Repealed]

THE SECOND SCHEDULE —VALUE OF STAMPS FOR CERTIFICATES

(Chapter I—Preliminary)

ACT No XVIII OF 1879 ¹

[29th October 1879]

An Act to consolidate and amend the law relating to Legal Practitioners

WHEREAS it is expedient to consolidate and amend the law relating Preamble
to Legal Practitioners in the Lower Provinces of Bengal, the North
Western Provinces, the Punjab, Oudh, the Central Provinces and
Assam, and to empower each of the Local Governments of the rest
of British India to extend to the territories administered by it such
portions of this Act as such Government may think fit, It is hereby
enacted as follows —

CHAPTER I

PRELIMINARY

1 This Act may be called the Legal Practitioners Act, 1879 and Short title
Commence
ment
shall come into force on the first day of January 1880

This section and section 2 extend to the whole of British India Local extent

The rest of this Act extends, in the first instance only to the territories respectively administered by the Lieutenant Governors of the Lower Provinces of Bengal, the North Western Provinces and the Punjab, and the Chief Commissioners of Oudh, the Central Provinces and Assam But any other ²[Provincial Government] may from time

¹ For the Statement of Objects and Reasons, see Gazette of India 1878, Pt V, p 361, for the Reports of the Select Committee, see *ibid*, 1879, Pt V, pp 51 and 841, for Proceedings in Council, see *ibid*, 1878, Supplement pp 1658 and 1693, *ibid*, 1879 Supplement, pp 79, 1066 and 1375

This Act has been declared to be in force by notification under s 3 (a) of the Scheduled Districts Act, 1874 (14 of 1874), in the Districts of Hazaribagh, Lohardaga and Manbhum and Pargana Dhalbhum and the Kolhan in the District of Singhbhum see Gazette of India, 1881 Pt I, p 504 The District of Lohardaga (now called the Ranchi District, see Calcutta Gazette, 1889 Pt I, p 44) included at this time the District of Palamu, which was separated in 1894

The provisions of this Act barring a few, have been brought into force in the N W F P by the N W F P Legal Practitioners Act, 1934 (N W F P 3 of 1934)

² Subs by the A O for L G

(Chapter I—Preliminary)

to time, by notification in the Official Gazette, extend¹ all or any of the provisions of the rest of this Act to the whole or any part of the territories under its administration

2. [Repeal of enactments] Rep by the Repealing Act, 1938 (I of 1938), s 2 and Sch

Interpreta-
tion-clause

3 In this Act, unless there be something repugnant in the subject or context,—

“Judge” means the presiding judicial officer in every Civil and Criminal Court, by whatever title he is designated

“Subordinate Court” means all Courts subordinate to the High Court, including Courts of Small Causes established under Act No IX of 1850² or Act No XI of 1865³

“revenue office” includes all Courts (other than Civil Courts) trying suits under any Act for the time being in force relating to land holders and their tenants or agents

“legal practitioner” means an advocate, vakil or attorney of any High Court, a pleader mukhtar or revenue agent

4[“tout” means a person—

(a) who procures, in consideration of any remuneration moving from any legal practitioner, the employment of the legal practitioner in any legal business, or who proposes to any legal practitioner or to any person interested in any legal

¹ Under this power, the Act has been extended, subject to certain omissions, and so far only as it relates to Judicial Courts, Civil and Criminal, to the Madras Presidency, except the Scheduled Districts, from 1st April 1882, see Fort St George Gazette, 1881, Pt I, pp 491 and 707. *Ss 3 and 4 of the Act have been extended to the Regulation Districts of the Bombay Presidency, see Bombay Government Gazette, 1885, Pt I, p 290, and ss 13 [except clauses (a), (b), (c), (d) and (f) thereof] 34, 36 and 40 have been extended to the whole of the Bombay Presidency except the Province of Sind (Bombay Gazette 1904 Pt I, p 1635), and to the Province of Sind (ibid, 1905 Pt I, p 634). Ch I, s 40, Sch II, and so much of Chs III, V, VI, and VII as relates to pleaders have been extended to Coorg, see Mysore Gazette, 1879, Pt I, p 355, see also Coorg District Gazette, 1891, Pt I, p 140, for notification extending ss 4 5 and 38, Coorg District Gazette 1899, Pt I, p 122, for notification extending ss 3, 13 and 36 as amended by Act XI of 1896 so far as they relate to pleaders, and Coorg Gazette, 1935, Pt I, p 2, for notification extending ss 4 and 41. *Ss 4 and 41 have been extended to Ajmer Merwara, see Gazette of India, 1927, Part II A, p 214**

² See now the Presidency Small Cause Courts Act 1882 (15 of 1882)

³ See now the Provincial Small Cause Courts Act, 1887 (9 of 1887)

⁴ Subs by s 2 of the Legal Practitioners (Amendment) Act, 1926 (15 of 1926), for the original definition

(Chapter I—Preliminary Chapter II—Of Advocates, Vakils and Attorneys)

business to procure, in consideration of any remuneration moving from either of them the employment of the legal practitioner in such business, or

- (b) who for the purposes of such procurement frequents the precincts of Civil or Criminal Courts or of revenue offices, or railway stations landing stages lodging places or other places of public resort]

CHAPTER II

OF ADVOCATES, VAKILS AND ATTORNEYS

4 Every person now or hereafter entered as an advocate or vakil on the roll of any High Court under the letters patent constituting such Court or ¹[under section 41 of this Act] ²[or enrolled as a pleader in the Chief Court of the Punjab under section 8 of this Act] shall be entitled to practise in all the Courts subordinate to the Court on the roll of which he is entered and in all revenue offices situate within the local limits of the appellate jurisdiction of such Court, subject, nevertheless, to the rules in force relating to the language in which the Court or office is to be addressed by pleaders or revenue agents and any person so entered who ordinarily practises in the Court on the roll of which he is entered or some Court subordinate thereto shall, notwithstanding anything herein contained, be entitled as such, to practise in any Court in British India other than a High Court on whose roll he is not entered or with the permission of the Court ³[or in the case of a High Court in respect of which the Indian Bar Councils Act, 1926, is in force subject to rules made under that Act] in any High Court on whose roll he is not entered and in any revenue office

Provided that no such vakil ⁴[or pleader] shall be entitled to practise under this section before a Judge of the High Court, Division Court or High Court exercising original jurisdiction in a Presidency town

5 Every person now or hereafter entered as an attorney on the roll of any High Court shall be entitled to practise in all the Courts subordinate to such High Court and in all revenue-offices situate within

¹ Subs for 'as an advocate on the roll of the Chief Court of the Punjab' by s 2 of the Legal Practitioners Act 1884 (9 of 1884)

² Ins by s 2 (a) of the Legal Practitioners (Amendment) Act, 1908 (1 of 1908)

³ Ins by the Indian Bar Councils Act 1926 (33 of 1926), s 19 and Sch

⁴ Ins by s 2 (b) of the Legal Practitioners (Amendment) Act, 1908 (1 of 1908)

(Chapter II —Of Advocates, Vakils and Attorneys Chapter III —Of Pleadors and Mukhtars)

the local limits of the appellate jurisdiction of such High Court, and every person so entered who ordinarily practises in the Court on the roll of which he is so entered or some Court subordinate thereto shall, notwithstanding anything herein contained, be entitled, as such, to practise in any Court in British India other than a High Court established by Royal Charter on the roll of which he is not entered and in any revenue office

The High Court of the province in which an attorney practises under this section may, from time to time, make rules declaring what shall be deemed to be the functions, powers and duties of an attorney so practising

CHAPTER III

OF PLEADERS AND MUKHTARS

6 The High Court may, from time to time, make rules¹ consistent with this Act as to the following matters (namely) —

- (a) the qualifications, admission and certificates of proper persons to be pleaders of the subordinate Courts, and of the revenue offices situate within the local limits of its appellate jurisdiction, and, in the case of a High Court not established by Royal Charter, ²[in respect of which the Indian Bar Councils Act, 1926, is not in force] of such Court,
- (b) the qualifications, admission and certificates of proper persons to be mukhtars of the subordinate Courts, and, in the case of a High Court not established by Royal Charter, ²[in respect of which the Indian Bar Councils Act, 1926, is not in force] of such Court,
- (c) the fees to be paid for the examination and admission of such persons, and
- (d) suspension and dismissal of such pleaders and mukhtars

All such rules shall be published in the ³[Official Gazette], and shall thereupon have the force of law. Provided that, in the case of rules made by a High Court not established by Royal Charter, such rules have been previously approved by the ⁴[Provincial Government]

¹ For rc
² Ins b
³ Subs
⁴ Subs

local Rules and Orders
 f 1926), s 19 and Sch

Power to make rules as to qualifications, etc., of pleaders and mukhtars

Publication of rules

(Chapter III —Of Pleaders and Mukhtars)

7 On the admission, under section 6, of any person as a pleader or mukhtar, the High Court shall cause a certificate, signed by such officer as the Court, from time to time, appoints in this behalf, to be issued to such person, authorizing him to practise up to the end of the current year in the Courts and, in the case of a pleader, also the revenue offices specified therein

Certificates
to pleaders
and mukh
tars

At the expiration of such period, the holder of the certificate, if he desires to continue to practise, shall, subject to any rules¹ consistent with this Act which may, from time to time, be made by the High Court in this behalf, be entitled to have his certificate renewed by the Judge of the District Court within the local limits of whose jurisdiction he then ordinarily practises, or by such officer as the High Court, from time to time, appoints in this behalf

On every such renewal, the certificate then in possession of such pleader or mukhtar shall be cancelled and retained by such Judge or officer

Every certificate so renewed shall be signed by such Judge or officer, and shall continue in force up to the end of the current year

Every Judge or officer so renewing a certificate shall notify such renewal to the High Court

2[Provided that, on the admission as a pleader of any person who has been previously entered as a vakil or attorney on the roll of a High Court established by Royal Charter, the High Court may in its discretion issue to such person a certificate authorizing him to practise permanently in the Courts and in the offices specified therein, and a certificate so issued shall not require to be renewed under this section]

8 Every pleader holding a certificate issued under section 7 may apply to be enrolled in any Court or revenue office mentioned therein and situate within the local limits of the appellate jurisdiction of the High Court by which he has been admitted and, subject to such rules consistent with this Act as the High Court or the Chief Controlling Revenue authority³ may, from time to time, make in this behalf, the presiding Judge or officer shall enrol him accordingly and thereupon he may appear plead and act in such Court or office and in any Court or revenue office subordinate thereto

Pleaders on
enrolment
may practise
in Courts
and revenue
offices

9 Every mukhtar holding a certificate issued under section 7 may apply to be enrolled in any Civil or Criminal Court mentioned therein and situate within the same limits, and, subject to such rules as the

Mukhtars on
enrolment
may practise
in Courts

¹ For rules regarding renewal of certificates see different local Rules and Orders

² Ins. by s. 3 of the Legal Practitioners (Amendment) Act 1908 (1 of 1908)

³ For definition, see the General Clauses Act, 1897 (10 of 1897) s. 3 (3a)

(Chapter III —Of Pleaders and Mukhtars)

High Court may from time to time make in this behalf, the presiding Judge shall enrol him accordingly, and thereupon he may practise as a mukhtar in any such Civil Court and any Court subordinate thereto, and may (subject to the provisions of the Code of Criminal Procedure¹) appear, plead and act in any such Criminal Court and any Court subordinate thereto

No person
to practise
as pleader
or mukhtar
unless
qualified

10 Except as provided by this Act or any other enactment for the time being in force, no person shall practise as a pleader or mukhtar in any Court not established by Royal Charter unless he holds a certificate issued under section 7 and has been enrolled in such Court or in some Court to which it is subordinate

Revenue-
agents may
appear,
plead
and act in
Munsifs
Courts
in suits
under
Bengal
Act VIII
of 1869

Provided that persons who have been admitted as Revenue agents before the first day of January 1880, and hold certificates, as such, under this Act in the territories administered by the Lieutenant Governor of Bengal may be enrolled in manner provided by section 9 in any Munsif's Court in the said territories, and on being so enrolled may appear, plead and act in such Court in suits under Bengal Act VIII of 1869² (to amend the procedure in suits between Landlord and Tenant) or under any other Act for the time being in force regulating the procedure in suits between landholders and their tenants and agents

Power to
declare
functions of
mukhtars

11 Notwithstanding anything contained in the Code of Civil Procedure³ the High Court may, from time to time, make rules declaring what shall be deemed to be the functions powers and duties of mukhtars practising in the subordinate Courts and in the case of a High Court not established by Royal Charter, in such Court

Suspension
and dismissal
of pleaders
and mukhtars
convicted
of criminal
offence

12 The High Court may suspend or dismiss any pleader or mukhtar holding a certificate issued under section 7 who is convicted of any criminal offence implying a defect of character which unfits him to be a pleader or mukhtar, as the case may be

Suspension
and dismissal
of pleaders
and mukhtars
guilty of
unprofessional
conduct

4[13 The High Court may also, after such inquiry as it thinks fit suspend or dismiss any pleader or mukhtar holding a certificate as aforesaid—

(a) who takes instructions in any case except from the party on whose behalf he is retained, or some person who is

¹ See now the Code of Criminal Procedure 1898 (Act 5 of 1898)

² See now the Bengal Tenancy Act 1885 (8 of 1885)

³ See now the Code of Civil Procedure 1908 (Act 5 of 1908)

⁴ Substituted by s. 2 of the Legal Practitioners Act 1896 (11 of 1896) for the original section

(Chapter III —Of Pleaders and Mukhtars)

the recognized agent of such party within the meaning of the Code of Civil Procedure¹, or some servant, relative or friend authorized by the party to give such instructions, or

- (b) who is guilty of fraudulent or grossly improper conduct in the discharge of his professional duty, or
- (c) who tenders, gives or consents to the retention, out of any fee paid or payable to him for his services, of any gratification for procuring or having procured the employment in any legal business of himself or any other pleader or mukhtar, or
- (d) who, directly or indirectly, procures or attempts to procure the employment of himself as such pleader or mukhtar through, or by the intervention of, any person to whom any remuneration for obtaining such employment has been given by him or agreed or promised to be so given or
- (e) who accepts any employment in any legal business through a person who has been proclaimed as a tout under section 36 or
- (f) for any other reasonable cause]

14 If any such pleader or mukhtar practising in any subordinate Court or in any revenue office is charged in such Court or office with taking instructions except as aforesaid, or with any such misconduct as aforesaid, the presiding officer shall send him a copy of the charge and also a notice that, on a day to be therein appointed, such charge will be taken into consideration

Procedure when charge of unprofessional conduct is brought in subordinate court or revenue office

Such copy and notice shall be served upon the pleader or mukhtar at least fifteen days before the day so appointed

On such day, or on any subsequent day to which the enquiry may be adjourned, the presiding officer shall receive and record all evidence properly produced in support of the charge, or by the pleader or mukhtar, and shall proceed to adjudicate on the charge

If such officer finds the charge established and considers that the pleader or mukhtar should be suspended or dismissed in consequence, he shall record his finding and the grounds thereof, and shall report the same to the High Court; and the High Court may acquit, suspend or dismiss the pleader or mukhtar

¹ See now the Code of Civil Procedure, 1908 (Act 5 of 1908).

(Chapter III —Of Pleaders and Mukhtars)

Suspension
pending in
vestigation

Any District Judge, or with his sanction any Judge subordinate to him, ¹[any Judge of a Court of Small Causes of a Presidency town,] any District Magistrate or with his sanction any Magistrate subordinate to him, and any Revenue authority not inferior to a Collector, or with the Collector's sanction any revenue officer subordinate to him, may, pending the investigation and the orders of the High Court, suspend from practice any pleader or mukhtar charged before him or it under this section

Every report made to the High Court under this section shall—

- (a) when made by any Civil Judge subordinate to the District Judge, be made through such Judge,
- (b) when made by a Magistrate subordinate to the Magistrate of the District ² be made through the Magistrate of the District ² and the Sessions Judge,
- (c) when made by the Magistrate of the District ², be made through the Sessions Judge,
- (d) when made by any Revenue officer subordinate to the Chief Controlling Revenue authority ³, be made through such Revenue authorities as the Chief Controlling Revenue-authority ³ may from time to time direct

Every such report shall be accompanied by the opinion of each Judge, Magistrate or Revenue authority through whom or which it is made

Power to
call for
record
in case of
acquittal
under
section 14

15 The High Court, in any case in which a pleader or mukhtar has been acquitted under section 14 otherwise than by an order of the High Court, may call for the record and pass such order thereon as it thinks fit

Power to
make rules
for
mukhtars
on appellate
side of High
Court

16 Notwithstanding anything contained in any letters patent or in the Code of Civil Procedure ⁴, section 37, clause (a), any High Court established by Royal Charter may from time to time, make rules consistent with this Act as to the following matters (namely) —

- (a) the qualifications and admission of proper persons to be mukhtars practising on the appellate side of such Court,
- (b) the fees to be paid for the examination and admission of such persons,

¹ Ins. by s. 4 of the Legal Practitioners Act, 1884 (9 of 1884)

² To be read as District Magistrate see s. 3 (*) of the Code of Criminal Procedure 1898 (Act 5 of 1898)

³ For definition see the General Clauses Act 1897 (10 of 1897) s. 3 (3a)

⁴ See now the Code of Civil Procedure 1908 (Act 5 of 1908)

(Chapter III —Of Pleaders and Mukhtars Chapter IV —Of
Revenue agents)

- (c) the security which they may be required to give for their honesty and good conduct,
- (d) the suspension and dismissal of such mukhtars, and
- (e) declaring what shall be deemed to be their functions, powers and duties,

and may prescribe and impose fines for the infringement of such rules, not exceeding in any case five hundred rupees, and such fines when imposed, may be recovered as if they had been imposed in the exercise of the High Court's ordinary original criminal jurisdiction

CHAPTER IV

OF REVENUE-AGENTS

17 The Chief Controlling Revenue authority¹ may, from time to time, make rules² consistent with this Act as to the following matters (namely) —

- (a) the qualifications, admission and certificates of proper persons to be revenue agents
- (b) the fees to be paid for the examination and admission of such persons,
- (c) the suspension and dismissal of such revenue agents, and
- (d) declaring what shall be deemed to be their functions, powers and duties

All such rules shall be published in the ³[Official Gazette] and shall thereupon have the force of law

18 On the admission of any person as a revenue agent under section 17, the Chief Controlling Revenue authority¹ shall cause a certificate, signed by such officer as such Authority from time to time appoints in this behalf to be issued to such person authorizing him to practise up to the end of the current year in such revenue offices as may be specified therein

At the expiration of such period, the holder of the certificate if he desires to continue to practise, shall be entitled to have his certificate

¹ For definition see the General Clauses Act 1897 (10 of 1897) s. 3 (9a)

² For rules made under this section as to Revenue Agents, see different local Rules and Orders

³ Subs. by the A. O. for 'local official Gazette

(Chapter IV —Of Revenue agents)

renewed by the Secretary of the Chief Controlling Revenue authority,¹ or by any other officer authorized by such Authority in that behalf

On every such renewal, the certificate then in the possession of such revenue agent shall be cancelled and retained by such Secretary or other officer

Every certificate so renewed shall be signed by such Secretary or other officer and shall continue in force to the end of the current year

Every officer so renewing a certificate shall notify the renewal to the Chief Controlling Revenue authority¹

Enrolment
of revenue
agent

19 Every revenue agent holding a certificate issued under section 18 may apply to be enrolled in any revenue office mentioned therein and situate within the limits of the territory under the Chief Controlling Revenue authority¹, and subject to such rules as the Chief Controlling Revenue authority¹ may, from time to time, make in this behalf, the officer presiding in such office shall enrol him accordingly, and thereupon he may practise as a revenue agent in such office and in any revenue office subordinate thereto

No person
to act as
agent in
revenue
offices
unless
qualified

20 Except as provided by this Act or any other enactment for the time being in force, no person other than a pleader duly qualified under the provisions hereinbefore contained, shall practise as a revenue agent in any revenue office unless he holds a certificate issued under section 18 and has been enrolled in such office or some other office to which it is subordinate

Provided that any person duly authorized in this behalf may with the sanction of the Chief Controlling Revenue authority¹, or of an officer empowered by the 2[Provincial Government] in this behalf, transact all or any business in which his principal may be concerned in any revenue-office

The sanction mentioned in this section may be general or special, and may at any time be revoked or suspended by the Authority or officer granting the same

Dismissal
of revenue-
agent
convicted
of criminal
offence

21 The Chief Controlling Revenue authority¹ may suspend or dismiss any revenue agent holding a certificate issued under this Act who is convicted of any criminal offence implying a defect of character which unfits him to be a revenue agent

¹ For definition see the General Clauses Act, 1897 (10 of 1897) s. 3 (9a)

² Subs. by the A. O. for L. G.

(Chapter IV—Of Revenue agents ;

1[22 The Chief Controlling Revenue authority² may also, after such inquiry as it thinks fit, suspend or dismiss any revenue agent holding a certificate as aforesaid—

Suspension
and dis-
missal of
revenue
agents
guilty of
unprofes-
sional con-
duct

- (a) who is guilty of fraudulent or grossly improper conduct in the discharge of his professional duty, or
- (b) who tenders, gives or consents to the retention, out of any fee paid or payable to him for his services, of any gratification for procuring or having procured the employment in any legal business of himself or any other revenue agent, or
- (c) who directly or indirectly, procures or attempts to procure the employment of himself as such revenue agent through, or by the intervention of, any person to whom any remuneration for obtaining such employment has been given by him, or agreed or promised to be so given, or
- (d) who accepts any employment in any legal business through a person who has been proclaimed as a tout under section 36 or
- (e) for any other reasonable cause ;

23 If any revenue agent holding a certificate issued under this Act is charged with any such conduct in any office subordinate to the Chief Controlling Revenue authority² or in the Court of any Munsif, the officer at the head of such office, or such Munsif, as the case may be, shall send him a copy of the charge and also a notice that, on a day to be therein appointed such charge will be taken into consideration

Procedure
when revenue-agent
is so
charged in
subordinate
office

Such copy and notice shall be served upon the person charged at least fifteen days before the day so appointed. On such day or on any other day to which the inquiry may be adjourned the officer or Munsif shall receive all evidence properly produced in support of the charge or by the person charged and shall proceed to adjudicate on the charge.

If the officer or Munsif finds the charge established and considers that the person charged should be suspended or dismissed in consequence he shall record his finding and the grounds thereof and report the same to the Chief Controlling Revenue authority² and such Authority shall proceed to acquit, suspend or dismiss him.

¹ Subs for the original section by s. 3 of the Legal Practitioners Act 1896 (11 of 1896)

² For definition see the General Clauses Act 1897 (10 of 1897) s. 3 (9a)

(Chapter IV —Of Revenue-agents Chapter V —Of Certificates)

Any Revenue officer not inferior to a Collector and, with the Collector's sanction, any Revenue officer subordinate to him, or any Munsif in his district may, pending the investigation and the orders of the Chief Controlling Revenue authority¹, suspend from practice any revenue agent charged before him under this section

Where any officer acting under this section is subordinate to the Commissioner of a Division he shall transmit the report through such Commissioner, who shall forward with the same an expression of his own opinion on the case

24 The Chief Controlling Revenue authority¹, in any case in which a Revenue agent has been acquitted under section 23 otherwise than by an order of the Chief Controlling Revenue authority¹, may call for the record and pass such order thereon as seems fit

Power to
Chief Con-
trolling
Revenue
authority
to call for
record

CHAPTER V

OF CERTIFICATES

25 Every certificate, whether original or renewed, issued under this Act shall be written upon stamped paper of the value prescribed therefor in the second schedule hereto annexed ²[and of such description as the ³[Provincial Government] may, from time to time, prescribe⁴]

Provided that a certificate issued on or after the first day of July in any year may be written on stamped paper of half the value so prescribed

⁵[Provided also that no stamped paper shall be required in the case of a certificate whether original or renewed authorizing, under section 7, a valil or attorney on the roll of a High Court established by Royal Charter to practise as a pleader]

26 When any pleader, mukhtár or revenue agent is suspended or dismissed under this Act he shall forthwith deliver up his certificate to the Court or officer at the head of the office before or in which he was practising at the time he was so suspended or dismissed, or to any Court or officer to which the High Court or Chief Controlling Revenue authority¹ (as the case may be) orders him to deliver the same

Dismissed
practitioners
to surrender
certificates

¹ For definition see the General Clauses Act 1897 (10 of 1897) s. 3 (2a)

² Ins. by s. 5 of the Legal Practitioners Act 1834 (9 of 1834)

³ Subs. by the A. O. for I. G.

⁴ For instance of rule prescribing the stamp paper to be used for certificates see letter to local Rules and Orders

⁵ Ins. by s. 4 of the Legal Practitioners (Amendment) Act 1908 (1 of 1908)

(Chapter VI.—Of the Remuneration of Pleaders, Mukhtars and Revenue-agents Chapter VII—Penalties)

CHAPTER VI

OF THE REMUNERATION OF PLEADERS, MUKHTARS AND REVENUE AGENTS

27 The High Court shall, from time to time, fix and regulate the fees¹ payable by any party in respect of the fees of his adversary's advocate, pleader, vakil, mukhtir or attorney upon all proceedings (a) on the appellate side of such Court, (b) in the case of a High Court not established by Royal Charter, on its original side, and (c) in subordinate Courts ²[and in respect of the fees of his adversary's revenue agent appearing pleading or acting under section 10]

High Court and Chief Controlling Revenue authority to fix fees on civil and revenue proceedings

The Chief Controlling Revenue authority³ shall, from time to time, fix and regulate⁴ the fees payable upon all proceedings in the revenue offices by any party in respect of the fees of his adversary's advocate, pleader, vakil attorney, mukhtir or revenue agent

Tables of the fees so fixed shall be published in the ⁵[Official Gazette]

Nothing in this section applies to the agents mentioned in the proviso to section 20

Exception as to agents mentioned in section 20

28 to 31 [Agreements with clients Power to modify or cancel agreements Agreements to exclude further claims Reservation of responsibility for negligence] Rep by the Legal Practitioners (Fees) Act, 1926 (XXI of 1926)

CHAPTER VII

PENALTIES

32 Any person who practises in any Court or revenue office in contravention of the provisions of section 10 or section 20 shall be liable, by order of such Court or the officer at the head of such office to a fine not exceeding ten times the amount of the stamp required by this Act for a certificate authorizing him so to practise in such Court or office, and in default of payment to imprisonment in the civil jail for a term which may extend to six months

On persons illegally practising as pleaders, mukhtars or revenue-agents

¹ For rules as to pleaders fees made by different High Courts etc see different local Rules and Orders

² Ins by s 6 of the Legal Practitioners Act 1834 (9 of 1834)

³ For definition see the General Clauses Act 1897 (10 of 1897) s 3 (a)

⁴ For rules as to fees in revenue proceedings see different local Rules and Orders

⁵ Subs by the A O for local official Gazette

(Chapter VII — Penalties)

He shall also be incapable of maintaining any suit for, or enforcing any lien with respect to, any fee or reward for, or with respect to, anything done or any disbursement made by him as pleader, mukhtár or revenue agent, whilst he has been contravening the provisions of either of such sections

On suspended or dismissed pleader, etc., failing to deliver certificate

33 Any pleader, mukhtár or revenue agent failing to deliver up his certificate as required by section 26 shall be liable, by order of the Court Authority or officer to which or to whom, or according to whose orders, the delivery should be made, to a fine not exceeding two hundred rupees, and in default of payment to imprisonment in the civil jail for a term which may extend to three months

On suspended or dismissed practitioner practising during suspension or after dismissal

34 Any pleader, mukhtár or revenue agent who, under the provisions of this Act, has been suspended or dismissed, and who, during such suspension or after such dismissal, practises as a pleader, mukhtár or revenue agent in any Court or revenue office shall be liable, by order of such Court or the officer at the head of such office, to a fine not exceeding five hundred rupees, and in default of payment to imprisonment in the civil jail for a term which may extend to six months

Revision of fines

35 Every order under section 32, 33 or 34 shall be subject to revision by the High Court where the order has been passed by a subordinate Court, and by the Chief Controlling Revenue authority¹ where the order has been passed by an officer subordinate to such Authority

Power to frame and publish lists of touts

2[36 (1) Every High Court, District Judge, Sessions Judge, District Magistrate and Presidency Magistrate every Revenue officer not being below the rank of a Collector of a district and the Chief Judge of every Presidency Small Cause Court (each as regards their or his own Court and the Courts if any subordinate thereto), may frame and publish lists of persons proved to their or his satisfaction, 3[or to the satisfaction of any subordinate Court as provided in sub section (2A)] by evidence of general repute or otherwise habitually to act as touts, and may, from time to time alter and amend such lists

3[Explanation —The passing of a resolution declaring any person to be or not to be a tout by a majority of the members present at a meeting, specially convened for the purpose of an association of persons entitled to practise as legal practitioners in any Court or revenue office, shall be evidence of the general repute of such person for the purposes of this sub section]

(2) No person's name shall be included in any such list until he shall have had an opportunity of showing cause against such inclusion

¹ For definition see the General Clauses Act 1897 (10 of 1897) s 3 (21)

² Subs by s 4 of the Legal Practitioners Act 1895 (11 of 1895) for the original section.

³ Ins by s 3 of the Legal Practitioners (Amendment) Act 1926 (15 of 1926)

(Chapter VII—Penalties Chapter VIII—Miscellaneous)

“(21) Any authority empowered under sub section (1) to frame and publish a list of touts may send to any Court subordinate to such authority the names of any persons alleged or suspected to be touts and order that Court to hold an inquiry in regard to such persons, and the subordinate Court shall thereupon hold an inquiry into the conduct of such persons and after giving each such person an opportunity of showing cause as provided in sub section (2) shall report to the authority which has ordered the inquiry the name of each such person who has been proved to the satisfaction of the subordinate Court to be a tout and that authority may include the name of any such person in the list of touts framed and published by that authority

Provided that such authority shall hear any such person who before his name has been so included appears before it and desires to be heard]

(3) A copy of every such list shall be kept hung up in every Court to which the same relates

(4) The Court or Judge may by general or special order exclude from the precincts of the Court any person whose name is included in any such list

(5) Every person whose name is included in any such list shall be deemed to be proclaimed as a tout within the meaning of section 13 clause (e) and section 22 clause (d)]

“(6) Any person who acts as a tout whilst his name is included in any such list shall be punishable with imprisonment which may extend to three months or with fine which may extend to five hundred rupees or with both]

CHAPTER VIII

MISCELLANEOUS

37 To facilitate the ascertainment of the qualifications mentioned in sections 6 and 17 respectively the 2[Provincial Government] shall from time to time appoint persons to be examiners for the purposes aforesaid and may from time to time make regulations³ for conducting such examinations

Provincial Government to appoint examiners.

¹ Sub sections (4) and (6) were ins. by s. 3 of the Legal Practitioners (Amendment) Act 1926 (15 of 1926)

² Subs. by the A. O. for L. G.

³ For regulations in different provinces see different local Rules and Orders.

(Chapter VIII — Miscellaneous)

Exemption
of High
Court practi-
tioners from
certain parts
of Act

38. Except as provided by sections 4, 5, ¹[7,] 16, ¹[25,] 27, 32 and 36, nothing in this Act applies to advocates, vakils and attorneys admitted and enrolled by any High Court under the letters patent by which such Court is constituted, or to mukhtars practising in such Court or to advocates enrolled ²[under section 41 of this Act] ³[and, except as provided by section 36, nothing in this Act applies to persons enrolled as advocates of any High Court under the Indian Bar Councils Act, 1926]. λ
19

Suspension
or dismissal
of person
holding
mukhtar
and revenue
agent's
certificates

39. When any person who holds a certificate as a mukhtar under section 7 and a certificate as a revenue agent under section 18 is suspended or dismissed in one of such capacities, he shall be deemed to be suspended or dismissed, as the case may be, also in the other

Pleaders,
etc., not to
be suspended
or dismissed
without
being heard

40. Notwithstanding anything hereinbefore contained, no pleader, mukhtar or revenue agent shall be suspended or dismissed under this Act unless he has been allowed an opportunity of defending himself before the Authority suspending or dismissing him

Power for
certain
High Courts
to enrol
advocates

4[41. (1) A High Court not established by Royal Charter ³[in respect of which the Indian Bar Councils Act, 1926, is not in force] may, XX
of 1 from time to time with the previous sanction of the ⁵[Provincial Government], make rules⁶ as to the qualifications and admission of proper persons to be advocates of the Court, and, subject to such rules, may enrol such and so many advocates as it thinks fit

(2) Every advocate so enrolled shall be entitled to appear for the suitors of the Court, and to plead or to act, or to plead and act, for those suitors, according as the Court may by its rules determine, and subject to those rules

(3) The High Court may dismiss any advocate so enrolled or suspend him from practice

(4) Provided that an advocate shall not be dismissed or suspended under this section unless he has been allowed an opportunity of defending himself before the High Court which enrolled him, and ⁷[except in the case of the Chief Court of Oudh] unless the order of the High Court

¹ Ins. by s. 5 of the Legal Practitioners (Amendment) Act, 1908 (1 of 1908)

² Subs. for 'by the Chief Court of the Punjab' by s. 7 of the Legal Practitioners Act, 1884 (9 of 1884)

³ Ins. by the Indian Bar Councils Act 1926 (38 of 1926) s. 19 and Sch.

⁴ Subs. by s. 3 of the Legal Practitioners Act, 1884 (9 of 1884) for the original section

⁵ Subs. by the A. O. for L. G.

⁶ For rules see different local Rules and Orders

⁷ Ins. by s. 2 and Sch. of the Oudh Courts (Supplementary) Act 1925 (32 of 1925)

(Chapter VIII—Miscellaneous First Schedule Second Schedule)

dismissing or suspending him has been confirmed by the ¹[Provincial Government]]

42 [Repeal of Chapter 11 of Bom Reg. II of 1827 and Acts I of 1846 and 11 of 1853] Rep by the Repealing Act 1938 (I of 1938), s 2 and Sch

FIRST SCHEDULE—[Enactments repealed] Rep by the Repealing Act 1938 (I of 1938) s 2 and Sch

SECOND SCHEDULE

VALUE OF STAMPS FOR CERTIFICATES

(See section 25)

I

For a certificate authorizing the holder to practise as a pleader—

- (a) in the High Court and any subordinate Court—rupees fifty
- (b) in any Court of Small Causes in a Presidency town—rupees twenty five
- (c) in all other subordinate Courts—rupees twenty five
- (d) in the Courts of Subordinate Judges Munsifs Assistant Commissioners Extra Assistant Commissioners and Tahsildars in Courts of Small Causes outside the Presidency towns and in all Criminal Courts subordinate to the High Court—rupees fifteen
- (e) in the Courts of Munsifs and any Civil or Criminal Court of first instance not hereinbefore specifically mentioned—rupees five

II

For a certificate authorizing the holder to practise as a mukhtar—

- (f) in the High Court and any subordinate Court—rupees twenty five
- (g) in any Court of Small Causes in a Presidency town—rupees fifteen
- (h) in all other subordinate Courts—rupees fifteen

(Second Schedule)

Raipur and Khattrra Laws

[1879: Act XIX.]

- (i) in the Courts of Subordinate Judges, Munsifs, Assistant Commissioners, Extra Assistant Commissioners and Tahsildars, in Courts of Small Causes outside the Presidency towns and in all Criminal Courts subordinate to the High Court—rupees ten
- (j) in the Courts of Munsifs and any Civil or Criminal Court of first instance not hereinbefore specifically mentioned—rupees five

III

For a certificate authorising the holder to practise as a revenue agent—

- (k) in the office of the Chief Controlling Revenue authority and in any revenue office subordinate to such Authority—rupees fifteen
- (l) in the office of a Commissioner and in any revenue office subordinate to a Commissioner—rupees ten
- (m) in the office of a Collector and in any revenue office subordinate to a Collector—rupees five

THE RAIPUR AND KHATTRA LAWS ACT, 1879

ACT No. XIX OF 1879¹

[29th October, 1879]

An Act to amend the law in force in *thanas* Raipur and Khattrra

Preamble

Whereas the territory comprised in the *thana* of Raipur (including the independent police outpost of Simlapal) and the *thana* of Khattrra has been transferred from the district of Manbhum to the district of Bankura,

And whereas the said territory, when included in the district of Manbhum, formed portion of the Chota Nagpur Division, which is a scheduled district under Act No. XIV of 1874 (the Scheduled Districts Act, 1874),

¹ For Proceedings in Council, see Supplement to Gazette of India, 1879, p. 1376

And whereas it is expedient that the law in force in the said territory should be the same as the law in force in the district of Bankura, It is hereby enacted as follows —

1 This Act may be called the Raipur and Khattrā Laws Act 1879 and it shall come into force at once

Short title
Commence
ment

2 All enactments which on the first day of October 1879 were in force in the district of Bankura and not in the said territory shall be deemed to have come into force in the said territory on that day, and all enactments which on that day were in force in the said territory and not in the district of Bankura shall be deemed to have been repealed on and from that day in the said territory

Laws of
Bankura
to apply
Other laws
repealed

3 (*Pending proceedings*) Rep by the *Amending Act 1891 (XII of 1891)*

4 The said territory shall be deemed to have ceased to be a scheduled district on the said first day of October 1879

Territory
to cease
to be a
scheduled
district

THE RELIGIOUS SOCIETIES ACT 1880

ACT No I OF 1880

[9th January 1880]

An Act to confer certain powers on Religious Societies

WHEREAS it is expedient to simplify the manner in which certain ^{readable} bodies of persons associated for the purpose of maintaining religious worship may hold property acquired for such purpose and to provide for the dissolution of such bodies and the adjustment of their affairs and for the decision of certain questions relating to such bodies It is hereby enacted as follows —

1 This Act may be called the Religious Societies Act 1880

It 2* * * * shall extend to the whole of Local extent

Short title -

1 For Statement of Objects and Reasons see Gazette of India 1879 Pt I p 770 for Proceedings in Council see *ibid* 1879 Supplement pp 598 745 and 174 *ibid* 1880 Supplement pp 23 and 170

2 The words shall come into force at once and rep by the Repealing and Amendment Act 1914 (10 of 1914)

British India,¹

but nothing herein contained shall apply to any Hindus, Muhammadans or Buddhists, or to any persons whom the ²[Provincial Government] may from time to time by notification in the ³[Official Gazette] exclude from the operation of this Act

Appointment of new trustees in cases not otherwise provided for

2 When any body of persons associated for the purpose of maintaining religious worship has acquired, or hereafter shall acquire, any property,

and such property has been or hereafter shall be vested in trustees in trust for such body

and it becomes necessary to appoint a new trustee in the place of or in addition to any such trustee or any trustee appointed in the manner hereinafter prescribed

and no manner of appointing such new trustee is prescribed by any instrument by which such property was so vested or by which the trusts on which it is held have been declared, or such new trustee cannot for any reason be appointed in the manner so prescribed

such new trustee may be appointed in such manner as may be agreed upon by such body, or by a majority of not less than two thirds of the members of such body actually present at the meeting at which the appointment is made

Appointment under section 2 to be recorded in a memorandum under the hand of the chairman of the meeting

3 Every appointment of new trustees under section 2 shall be made to appear by some memorandum under the hand of the chairman for the time being of the meeting at which such appointment is made

Such memorandum shall be in the form set forth in the schedule hereto annexed or as near thereto as circumstances allow shall be executed and attested by two or more credible witnesses in the presence of such meeting, and shall be deemed to be a document of which the registration is required by the Indian Registration Act 1877⁴ section III 17

¹ The Act has been declared by notification under s 3 (a) of the Scheduled Districts Act 1874 (14 of 1874) to be in force in the following Scheduled Districts in the Chota Nágpur Division namely—

the Districts of Hazaribagh, Lohardaga and Manbhum and Pargana Dhallum and the Kolhán in the District of Singhbhum, see Gazette of India 1881 Pt I p 504 The District of Lohardaga (now called the Ranchi District—see Calcutta Gazette 1899 Pt I p 44) included at this time the present District of Palamau which was separated in 1894

² Subs by the A O for the words 'L G' which had been subs for the words 'G G in C' by s 2 and Sch I of the Devolution Act 1900 (38 of 1920)

³ Subs by the A O for the words 'local official Gazette' which had been subs for the words 'Gazette of India' by s 2 and Sch I of Act 38 of 1900

⁴ See now the Indian Registration Act 1908 (16 of 1908)

4 When any new trustees have been appointed, whether in the manner prescribed by any such instrument as aforesaid or in the manner hereinbefore provided, the property subject to the trust shall forthwith, notwithstanding anything contained in any such instrument, become vested, without any conveyance or other assurance, in such new trustees and the old continuing trustees jointly, or, if there are no old continuing trustees, in such new trustees wholly, upon the same trusts, and with and subject to the same powers and provisions, as it was vested in the old trustees

Property to
vest in new
trustees
without con-
veyance

5 Nothing herein contained shall be deemed to invalidate any appointment of new trustees, or any conveyance of any property, which may hereafter be made as heretofore was by law required

Saving of
existing
modes
of appoint-
ment and
conveyance

6 Any number not less than three-fifths of the members of any such body as aforesaid may at a meeting convened for the purpose determine that such body shall be dissolved; and thereupon it shall be dissolved forthwith, or at the time then agreed upon, and all necessary steps shall be taken for the disposal and settlement of the property of such body, its claims and liabilities, according to the rules of such body applicable thereto, if any, and, if not, then as such body at such meeting may determine

Provision for
dissolution
of societies
and adjust-
ment of
their affairs

Provided that, in the event of any dispute arising among the members of such body, the adjustment of its affairs shall be referred to the principal Court of original civil jurisdiction of the district in which the chief building of such body is situate, and the Court shall make such order in the matter as it deems fit

7 If upon the dissolution of any such body there remains, after the satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to or distributed among the members of such body or any of them, but shall be given to some other body of persons associated for the purpose of maintaining religious worship or some other religious or charitable purpose to be determined by the votes of not less than three-fifths of the members present at a meeting convened in their behalf, or in default thereof by such Court as last aforesaid

Upon a dis-
solution no
member to
receive
profit

8. Nothing in sections 6 and 7 shall be deemed to affect any provision contained in any instrument for the dissolution of such body, or for the payment or distribution of such property

Saving of
certain
provisions
of instru-
ments

9 When any question arises, either in connection with the matters hereinbefore referred to, or otherwise, as to whether any person is a member of any such body as aforesaid, or as to the validity of any appointment under this Act, any person interested in such question may apply by petition to the High Court for its opinion on such

Questions
may be
submitted
to High
Court

question. A copy of such petition shall be served upon, and the hearing thereof may be attended by, such other persons interested in the question as the Court thinks fit.

Any opinion given by the Court on an application under this section shall be deemed to have the force of a declaratory decree ¹.

The costs of every application under this section shall be in the discretion of the Court.

THE SCHEDULE

(See section 3.)

Memorandum of the appointment of the new trustees of the (*describe the church, chapel, or other building and property*) situate at a meeting duly convened and held for that purpose (*in the vestry of the said*) on the day of

18 , A. B of Chairman

Names and descriptions of all the trustees on the constitution or last appointment of trustees, made the day of

(*here insert the same*)

Names and descriptions of all the trustees in whom the said (*chapel and property*) now become legally vested,

First — Old continuing trustees —

(*here insert the same*)

Second — New trustees now chosen and appointed —

(*here insert the same*)

Dated this day of 18

Signed by the said A B as chairman of the
said Meeting, at and in the presence of the } A B ,
said Meeting on the day and year aforesaid in the } Chairman of the
presence of— } said Meeting

C D

E F

¹ As to effect of a declaratory decree see s. 43 of the Specific Relief Act, 1877 (1 of 1877)

THE KAZIS ACT, 1880

ACT No. XII OF 1880¹

[9th July 1880]

An Act for the appointment of persons to the Office of Kázi.

WHEREAS by the preamble to Act No. XI of 1864² (*An Act to repeal the law relating to the offices of Hindu and Muhammadan Law officers and to the offices of Kazi-ul Kuzaat and of Kázi, and to abolish the former offices*) it was (among other things) declared that it was inexpedient that the appointment of the Kázi ul-Kuzáat, or of City, Town or Pargana Kázis, should be made by the Government, and by the same Act the enactments relating to the appointment by the Government of the said officers were repealed, and whereas by the usage of the Muhammadan community in some parts of British India the presence of Kázis appointed by the Government is required at the celebration of marriages and the performance of certain other rites and ceremonies, and it is therefore expedient that the Government should again be empowered to appoint persons to the office of Kázi, It is hereby enacted as follows —

1 This Act may be called the Kázis Act, 1880,

Short title

3

It extends, in the first instance, only to the territories administered by the Governor of Fort Saint George in Council But any other⁴ [Provincial Government] may from time to time, by notification in the Official Gazette, extend it to the whole or any part of the territories under its administration⁵

Local extent

2 Wherever it appears to the⁴ [Provincial Government] that any considerable number of the Muhammadans resident in any local area desire that one or more Kázis should be appointed for such local area, the⁴ [Provincial Government] may, if it thinks fit, after consulting the principal Muhammadan residents of such local area, select one or more fit persons and appoint him or them to be Kázis for such local area

Power to appoint Kázis for any local area

¹ For Statement of Objects and Reasons see Gazette of India 1880 Pt V p 21 for the Report of the Select Committee, see *ibid*, Pt V, p 203, for discussions in Council, see *ibid*, Supplement, pp 345, 356, and 1203

² Rep by the Repealing Act, 1868 (8 of 1868)

³ The words 'and it shall come into force at once' rep by the Repealing and Amending Act, 1914 (10 of 1914)

⁴ Subs by the A O for 'L G

⁵ The Act has been extended to certain places in the Bombay Presidency, Central the U P, the Punjab, the C P and Assam, see local R and O

ACT No XIII or 1880 ¹

[9th July 1880]

An Act to give power to prohibit inoculation and to make the vaccination of children compulsory in certain Municipalities and Cantonments ²

Preamble WHEREAS it is expedient to give power to prohibit inoculation, and make the vaccination of children compulsory in certain municipalities and cantonments², It is hereby enacted as follows —

Short Title 1. This Act may be called the Vaccination Act, 1880 and

Application it shall apply only to such municipalities and cantonments³ situate in the ⁴territories administered respectively by the Lieutenant Governors of the North Western Provinces and the Punjab, and the Chief Commissioners of Oudh, the Central Provinces, ⁵* * Assam, Ajmere and Coorg as it may be extended to in manner hereinafter provided

Interpretation clause 2 In this Act unless there is something repugnant in the subject or context,—

'Municipal Commissioners' (1) the expression 'Municipal Commissioners' means a body of Municipal Commissioners or a Municipal Committee constituted under the provisions of any enactment for the time being in force

'parent' (2) "parent" means the father of a legitimate child and the mother of an illegitimate child

'guardian' (3) "guardian" includes any person who has accepted or assumed the care or custody of any child

'unprotected child' (4) "unprotected child" means a child who has not been protected from small pox by having had that disease either naturally or by inoculation, or by having been successfully vaccinated, and who has not been certified under this Act to be insusceptible to vaccination

¹ For Statement of Objects and Reasons, see Gazette of India, 1880, Pt V, p 80 for Report of Select Committee, see *ibid*, p 205, and for Proceedings in Council, see *ibid*, 1879, Supplement, p 1225, and *ibid*, 1880, Supplement, pp 566, 1204

This Act has been declared to be in force in British Baluchistan by the British Baluchistan Laws Regulation, 1913 (2 of 1913), s 3

It has been diversely amended by the following Vaccination Law Amendment Acts —

in the U P, by U P Act 2 of 1907,

in the Punjab, by Punjab Acts 3 of 1915 and 2 of 1929, and

, in the C P, by C P Acts 3 of 1915, 6 of 1932 and 4 of 1933

² The long title and preamble have been amended in the U P, the Punjab and the C P so as to include other local areas

³ This provision has been amended in the U P, the Punjab and the C P so as to include other local areas

⁴ These territories now correspond to the U P, the Punjab, the N W F P the C P, Assam, Ajmer Merwara and Coorg

⁵ The words British Burma rep by the A O

(5) 'inoculation' means any operation performed with the object of producing the disease of small pox in any person by means of various matter inoculation

(6) 'vaccination circle' means one of the parts into which a municipality or cantonment has been divided under this Act for the performance of vaccination vaccination circle "

(7) 'vaccinator' means any vaccinator appointed under this Act to perform the operation of vaccination or any private person authorized * * * in manner hereinafter provided to perform the same operation and includes a Superintendent of vaccination vaccinator

(8) 'vaccination season' means the period from time to time fixed by the 2[Provincial Government] for any local area under its administration by notification in the Official Gazette during which alone vaccination may be performed under this Act vaccination season

3 A majority in number of the persons present at a meeting of the Municipal Commissioners specially convened in this behalf may apply to the 2[Provincial Government] to extend this Act to the whole or any part of a municipality and thereupon the 2[Provincial Government] may if it thinks fit by notification published in the Official Gazette declare its intention to extend this Act in the manner proposed Extension of Act to municipalities

Any inhabitant of such municipality or part thereof who objects to such extension may within six weeks from the date of such publication send his objection in writing to the Secretary to the 2[Provincial Government] and the 2[Provincial Government] shall take such objection into consideration. When six weeks from the said publication have expired the 2[Provincial Government] if no such objections have been sent as aforesaid or (when such objection have been so sent) if in its opinion they are insufficient may by like notification effect the proposed extension 3

4 The 2[Provincial Government] may * * * by notification in the 5[Official Gazette] extend this Act to the whole or any part of a military cantonment Extension to cantonments

¹ The words 'by the L. G.' rep. by the Decentralization Act 1914 (4 of 1914) s. 2 and Sch. 11.

² Subs. by the A. O. for L. G.

³ In the U. P. and the Punjab a new s. 3A has been inserted by U. P. Act 2 of 1907 and Punjab Act 2 of 1909 respectively providing for extension of the Act to other local areas. In the C. P. ss. 3A, 3B, 3C and 3D have been inserted for a similar purpose by C. P. Acts 3 of 1915, 6 of 1932 and 14 of 1933 respectively.

⁴ The words 'subject to the control of the G. G.' rep. by the Devolution Act 1920 (38 of 1920).

⁵ Subs. by the A. O. for local official Gazette.

Power to
withdraw
local area
from opera-
tion of
Act

5 The ¹[Provincial Government] may, by notification in the Official Gazette, withdraw any local area in a municipality² or 3* * * any local area in a cantonment, from the operation of this Act.

Prohibition
of inocula-
tion

6 In any local area to which the provisions of this Act apply, inoculation shall be prohibited, and

Inoculated
persons not
to enter
without
certificate
local area
subject to
Act

no person who has undergone inoculation shall enter such area before the lapse of forty days from the date of the operation, without a certificate from a medical practitioner, of such class as the ¹[Provincial Government] may from time to time by written order authorize to grant such certificates, stating that such person is no longer likely to produce small pox by contact or near approach

Vaccination
circles

7- Every local area to which this Act applies shall be a vaccination-circle, or shall in manner hereinafter provided be divided into a number of such circles,

Vaccinators

one or more vaccinators shall be appointed in manner hereinafter provided for each such circle, and

Superintend-
ent of vacci-
nation

one or more Superintendents of vaccination shall be appointed in manner hereinafter provided for each such local area

Private
vaccinators

8 The ⁴[Commissioner] may by written licence authorize private vaccinators to perform vaccination in any vaccination circle, and may suspend or cancel any such licence

Unprotected
children
to be
vaccinated

9 When any unprotected child, having attained the age of 6 months, has resided for a period of one month during the vaccination season in any local area to which the provisions of this Act apply, and has not at the expiration of such period attained the age, if a boy, of fourteen years, and if a girl, of eight years, the parent or guardian of such child shall take it, or cause it to be taken, to a vaccinator to be vaccinated, or send for a vaccinator to vaccinate it

Vaccinator
to vaccinate
children or
deliver
certificates
of post-nat-
al

Such vaccinator shall vaccinate the child and deliver to its parent or guardian a memorandum stating the date on which the vaccination has been performed and the date on which the child is to be inspected in order to ascertain the result of the operation, or shall, if he finds such child in a state unfit for vaccination, deliver to its parent or guardian a certificate under his hand to the effect that the child is in a state unfit for vaccination for the whole or part of the current vaccination season

¹ Subs 1y the A O for L G

² This provision has been amended in the U P, the Punjab and the C P so as to include other local areas

³ The words 'subject to the control of the G G in C' rep by the Devolution Act 1920 (33 of 1920)

⁴ Subs 1y the Decentralization Act, 1914 (4 of 1914), s 2 and Sch, Pt I, for 'L G'

In the N W F P the reference to the Commissioner should be construed as referring to the Revenue Commissioner see the N W F P Law and Justice Regulation 1901 (7 of 1901) s 6 (1) (f)

10 The parent or guardian of every child which has been vaccinated under section nine shall, on the date of inspection stated in the memorandum, take the child, or cause it to be taken, to a vaccinator for inspection, or get it inspected at his own house by a vaccinator, and such vaccinator shall then append to the memorandum a certificate stating that the child has been inspected and the result of such inspection

Inspection
after vac-
cination

11 When it is ascertained at the time of inspecting a child under section ten that the vaccination has been successful, a certificate shall be delivered by the vaccinator to the parent or guardian of such child to that effect and such child shall thereafter be deemed to be protected

Procedure
when vac-
cination is
successful

12 When it is ascertained as aforesaid that the vaccination has been unsuccessful the parent or guardian shall, if the vaccinator so direct, cause the child to be forthwith again vaccinated and subsequently in inspected in manner hereinbefore provided

Procedure
when vac-
cination is
unsuccessful

13 A certificate granted under section nine showing the unfitness of a child for vaccination shall remain in force for the period stated therein and on the termination of that period or if that period terminates after the vaccination season is over when the next vaccination season begins the parent or guardian of such child shall take the child or cause it to be taken to a vaccinator to be vaccinated or procure its vaccination at his own house by a vaccinator

Procedure
when child
is unfit for
vaccination

Provided that if the child is still found to be in a state unfit for vaccination the certificate granted under section nine shall be renewed

Renewal of
postpone-
ment
certificates

14 If the Superintendent of vaccination is of opinion that a child which has been three times unsuccessfully vaccinated is insusceptible of successful vaccination he shall deliver to the parent or guardian of such child a certificate under his hand to that effect and the parent or guardian shall thenceforth not be required to cause the child to be vaccinated

Certificates
of insuscep-
tibility of
successful
vaccination

15 The vaccination of a child shall ordinarily be performed with such lymph as may be prescribed by the rules to be made under this Act

What lymph
to be used

Provided that,

1st, if animal lymph is so prescribed and the parent or guardian of any child desires that such child shall be vaccinated with human lymph it shall be so vaccinated and

2nd if in any local area in which animal lymph is procurable human lymph is so prescribed and the parent or guardian of any child desires that such child should be vaccinated with animal lymph and tenders to

the vaccinator the amount of such fee, not exceeding one rupee, as may be fixed by such rules in this behalf, *such child shall be so vaccinated*

No fee to be charged except by private vaccinator
Provi o

16 No fee shall be charged by any vaccinator except a private vaccinator to the parent or guardian of any child for any of the duties imposed on such vaccinator by or under the provisions of this Act

Provided that it shall be lawful for a vaccinator to accept a fee for vaccinating a child by request of the parent or guardian elsewhere than in the circle for which such vaccinator is appointed

Duties of Superintendent of vaccination

17 The Superintendent of vaccination, in addition to the other duties imposed on him by or under the provisions of this Act, shall ascertain whether all unprotected children, under the age of fourteen years if boys, and under the age of eight years if girls, within the local area under his superintendence have been vaccinated, and, if he has reason to believe that the parent or guardian of any such child is bound by the provisions hereinbefore contained to procure the vaccination of such child or to present it for inspection, and has omitted so to do, he shall personally go to the house of such parent or guardian, and there make enquiry, and shall, if the fact is proved forthwith deliver to such parent or guardian, or cause to be affixed to his house, a notice requiring that the child be vaccinated, or (as the case may be) that it be presented for inspection, at a time and place to be specified in such notice

Notice to parent or guardian neglecting to comply with Act

Order by Magistrate when notice not complied with

18 If such notice is not complied with, the Superintendent of vaccination shall report the matter to the ¹Magistrate of the District or such Magistrate as the ²[Provincial Government] or the ¹Magistrate of the District may from time to time appoint in this behalf, and the Magistrate receiving such report shall summon the parent or guardian of the child and demand his explanation, and shall if such explanation is not satisfactory make an order in writing directing such parent or guardian to comply with the notice before a date specified in the order

Procedure when order not obeyed

If on such date the order has not been obeyed, the Magistrate shall summon the parent or guardian before him, and unless just cause or excuse is shown, shall deal with the disobedience as an offence punishable under section twenty two

Magistrates to be non official Natives

The Magistrates appointed under this section shall, as far as is conveniently practicable be Natives of India, and not paid servants of the ³[Crown]

¹ Read District Magistrate, see the Code of Criminal Procedure 1898 (Act 5 of 1938) s 3 (2)

² Subs by the A O for I G

³ Subs by the A O for Govt

19 When this Act has been applied to any municipality or any part thereof, the Municipal Commissioners may, from time to time make rules consistent with this Act for the proper enforcement of this Act within the limits to which it applies. Such rules shall be made in the manner in which under the law for the time being in force, the ²[Municipal] Commissioners make rules or bye laws for the regulation of other matters within the limits of the municipality and shall when confirmed by the ³[Commissioner] and published in the Official Gazette have the force of law.

Power to
make rules
for munici-
palities

Provided that the ³[Commissioner] may at any time rescind or modify any such rule ⁴

20 When this Act has been applied to any cantonment or any part thereof the ⁵[Provincial Government] may from time to time make such rules

Power to
make rules
for canton-
ments

21 The rules to be made for any local area under section nineteen or ⁶twenty may, among other matters provide for—

What rules
under sec-
tions 19
and 20 may
provide for

- (a) the division of such local area into circles for the performance of vaccination
- (b) the appointment of a place in each vaccination circle as a public vaccine station and the posting of some distinguishing mark in a conspicuous place near such station
- (c) the qualifications to be required of public vaccinators and Superintendents of vaccination
- (d) the authority with which their appointment suspension and dismissal shall rest,
- (e) the time of attendance of public vaccinators at the vaccine stations and their residence within the limits of the vaccination circles
- (f) the distinguishing mark or badge to be worn by them

¹ For such rules see the local B and O

² Ins by the Decentralization Act 1914 (4 of 1914) s 7 and Sch Pt 1

³ Subs for L G *ibid* see also foot note 4 below s 8 *supra*

⁴ S 19 has been replaced by another section in the Punjab by Punjab Act 9 of 1925. After this section a new section 19A has been ins in the Punjab and the U P and two new sections 19A and 19B in the C P by Punjab Act 2 of 1929 U P Act 2 of 1907 and C P Acts 3 of 1915 and 6 of 1932 respectively

⁵ Subs by the A O for L G

⁶ The words subject to the control of the C G in C rep by the Devout on Act 1920 (38 of 1920)

⁷ For such rules see the different local P and O

⁸ The word and letter nineteen A have been ins at this place in the Punjab and the U P and the words and letters nineteen A nineteen B have been ins in the C P by Punjab Act 2 of 1929 U P Act 2 of 1907 and C P Acts 3 of 1915 and 6 of 1932 respectively

- (g) the amount of fee chargeable by private vaccinators, and their guidance generally in the performance of their duties,
- (h) the facilities to be afforded to people for procuring the vaccination of their children at their own houses,
- (i) the grant and form of certificates of successful vaccination, of unfitness for vaccination or of insusceptibility of vaccination,
- (j) the nature of the lymph to be used and the supply of a sufficient quantity of such lymph,
- (k) the fee to be paid for vaccination with animal lymph under section fifteen,
- (l) the fee to be paid to a public vaccinator for vaccinating a child beyond the vaccination circle at the request of the parent or guardian of the said child,
- (m) the preparation and keeping of registers showing—
 - the names of children born in such local area on or after the date of the application of this Act,
 - the names of unprotected children born in such local area previous to the application of this Act, and who are, at the time this Act is applied, under the age of fourteen years if boys, and of eight years if girls,
 - the names of unprotected boys and girls respectively under those ages brought within such local area at any time after the application of this Act and who have resided there for a month,
 - the result of each vaccination or its postponement, and the delivery of certificates, if any,
- ¹(n) the assistance to be given by the Municipal Commissioners and municipal servants in the preparation of these registers, and in other matters, and
- (o) the preparation of vaccination reports and returns

Punishment
of offences.

22 Whoever commits any of the undermentioned offences (that is to say) —

- (a) violates the provisions of section six,
- (b) neglects without just excuse to obey an order made under section eighteen,

¹This clause has been amended in the Punjab and the C P by Punjab Act 2 of 1923 and C P Act 6 of 1932, respectively, so as to include members of District Boards/Councils and the servants of those local bodies

1881: Act I.]

Taj Mahal's Pension

(c) breaks any of the rules made under section nineteen¹ or twenty, or

(d) neglects without just cause to obey an order made under section eighteen after having been previously convicted of so neglecting to obey a similar order made in respect of the same child,

shall be punished as follows (that is to say) —

in the case of the offence mentioned in clause (a), with simple imprisonment for a term which may extend to three months, or with fine which may extend to two hundred rupees, or with both,

in the case of the offences mentioned in clauses (b) and (c), with fine which may extend to fifty rupees, and

in the case of the offence mentioned in clause (d), with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both

23 The amount of all fees ² * realized, and the amount of all expenditure incurred under this Act in any municipality shall respectively be credited to and paid from the Municipal Fund ³

Municipal funds to receive fees and meet expenditure.

TAJ MAHAL'S PENSION ACT, 1881

ACT No. I OF 1881.⁴

[1st January 1881]

An Act for the determination of claims to Taj Mahal's pension

Whereas by a treaty dated the 24th Shaban 1244 Hijri, corresponding with the first day of March, 1829, and made between His Majesty the King of Oudh and the Government of the Hon ble the East India Company it was (amongst other things) agreed that a certain pension therein specified should be paid by the English Government to one Nawab Taj Mahal therein named, and that if she should die leaving an heir or heirs the English Government might at its election

¹ See foot-note 8 on page 611

² The words "and fines" rep by the A. O.

³ This section has been amended in the U. P., the Punjab and the C. P. by U. P. Act 2 of 1907, Punjab Acts 9 of 1925 and 2 of 1929 and C. P. Act 6 of 1932 so as to include other local areas and funds.

⁴ For statement of Objects and Reasons see Gazette of India, 1880, Pt. V, p. 323.

continue as before such pension to her heirs, or make over to them the principal sum proportionate to such pension according to the rate thereinbefore mentioned,

and whereas the said Taj Mahal is now dead and doubts exist as to who are her heirs, and it is therefore expedient to provide for the appointment of a person to represent her estate for the purpose of receiving such pension,

and whereas the Secretary of State for India in Council is desirous of making over to the persons entitled to receive the said pension the principal sum proportionate thereto as provided in the said treaty, and it is expedient to empower the said Secretary of State in Council to capitalize the said pension pending the appointment of a person as aforesaid, It is hereby enacted as follows —

1 This Act may be called 'Taj Mahal's Pension Act 1881' and it shall come into force at once

2 Any person considering himself entitled to the said pension, or any portion thereof, may apply in writing to the Court of the District Judge of Lucknow (hereinafter called the District Court) for a certificate authorizing him to receive the same

The application shall be in such form and shall contain such particulars as the ¹[Central Government] may from time to time, by rules to be published in the ²[Official Gazette], direct

3 The District Court shall fix a day for hearing the application, and shall cause to be stuck up in the court house, and otherwise published or made known at the expense of the applicant, in such manner as it thinks fit, a copy of the application, with a notice stating the time and place at which it will be heard, and calling upon all persons claiming to have a better right than the applicant to the grant of the certificate to come in and oppose the application

4 On the day so fixed, or any subsequent day to which the Court may adjourn the hearing, the Court shall, if no person claiming to have a better right than the applicant to the grant of the certificate is present, hear the application, and if, after recording the evidence produced by the applicant in support of his claim, and making such further enquiry (if any) as it thinks necessary, the Court is of opinion that the applicant has established his claim, it shall make an order for granting him a certificate

In the event of the applicant not having, in the opinion of the Court established his claim it shall make an order dismissing his application

¹ Subs. by the A. O. for G. O. in C.

² Subs. by the A. O. for Gazette of India

Short title
Commence-
ment

Certificate
to be ob-
tained by
application
to the
District
Court
Form of
application

Publication
of applica-
tion and
notice to
persons
desiring
to oppose
it

Procedure
at hearing
when no
opposition

5 In any case in which any person claiming to have a better right than the applicant to the grant of the certificate is present the Court shall after hearing the application and recording the evidence produced by the applicant in support of his claim hear such person and record the evidence produced by him in support of his claim and shall then after making such further enquiry (if any) as it thinks necessary determine which of the parties (if either) has established his claim to the certificate and shall make an order for granting the same accordingly

Procedure
in case of
opposition

In the event of neither party having in the opinion of the Court established his claim the Court shall make an order dismissing both the application and the counter claim

6 When any order dismissing an application under section four or any order under section five is made an appeal by any party to the proceedings who deems himself aggrieved by such order shall lie to the High Court which may make an order dismissing such appeal or granting a certificate or otherwise reversing or varying the order of the District Court as it thinks fit

Appeal to
the High
Court

7 The period of limitation for an appeal under section six shall be sixty days from the date of the order appealed against

Period of
limitation
for appeal

In computing such period and in all respects not herein specified the limitation of such appeals shall be governed by the provisions of the Indian Limitation Act 1877¹

8 A certificate granted under this Act shall specify the payments which the person to whom it is granted is entitled to receive and shall contain such other particulars as the ²[Central Government] may from time to time prescribe in this behalf

Form of
certificate

9 Every certificate granted under section four or section six and every certificate granted under section five when the period of limitation fixed by section seven has expired without an appeal having been preferred against the order granting such certificate

Effect of
certificate

shall while it remains in force be conclusive evidence against the said Secretary of State in Council of the right of the person to whom it has been granted to receive the payments specified therein and shall unless or until it is rescinded and the authority rescinding it has given to the said Secretary of State in Council notice of such rescission empower such person to give to the said Secretary of State in Council a full discharge for any such payment

10 The said Secretary of State in Council shall not be bound to pay the said pension or any portion thereof to any person claiming the

No obligation
to pay
except on

¹ See now the Indian Limitation Act 1908 (9 of 1908)

² Subs. by the A. O. for G. G. in C.

production
of certi-
ficate

same, except on the production by such person of a certificate, granted in the manner herein provided, authorizing him to receive the same

Right of
third parties
against
holder of
certificate
saved

11. Nothing herein contained shall be deemed to affect the right of any person to recover by suit from the holder of a certificate granted under this Act, the amount of any payment made to him in virtue of such certificate

Court may
take
security
from
grantee of
certificate

12 The Court ordering any certificate to be granted under this Act may, if it thinks fit, direct that before such certificate is granted, such security (if any) as it thinks necessary shall be taken from the person to whom such certificate is to be granted, for his rendering an account of the payments to be received by him in virtue of such certificate to any person who may be entitled to recover from him in manner referred to in section eleven, the whole or any part of such payments

Court may
grant fresh
certificate
to person
who has
recovered by
suit amount
paid to
holder
of old
certificate
Effect of
fresh
certificate

13 The District Court may, on the application of any person who has recovered by suit from the holder of a certificate granted under this Act, the amount of any payment made to him in virtue of such certificate, grant a certificate to such person in supersession, wholly or in part, as the case may be, of the former certificate

No appeal shall lie from any order under this section

On the grant of a fresh certificate under this section the former certificate shall be deemed to be rescinded wholly or in part, as the case may be

Proceedings
to be
regulated
by Code of
Civil
Procedure

14 In all proceedings, under this Act the District Court and the High Court shall, as far as may be and except as herein otherwise provided, exercise the powers and follow the procedure conferred on, and prescribed for, a Court of first instance and a Court of appeal, respectively, by the Code of Civil Procedure¹ Provided that nothing contained in Chapter XLV¹ of the said Code shall apply to any order made in any such proceeding

Matters
decided in
civil suits
to be treat-
ed as res
judicata

15 The provisions of section thirteen of the said Code shall apply to all cases under section five of this Act in which the question of heirship to the said Taj Mahal, having been directly and substantially in issue in a suit in a Court of competent jurisdiction between the claimants or between parties under whom they or any of them claim, litigating under the same title, has been heard and finally determined by such Court

Indemnity
as to pay-
ments
already
made

16 All payments heretofore made by or on behalf of the said Secretary of State in Council under the said treaty shall be deemed to have been made in accordance with law Provided that nothing in this

¹ See now the Code of Civil Procedure 1908 (5 of 1908) ss 109 to 112

section shall affect the right of any person to recover by suit the amount of any such payment from the person to whom the same has been made.

17. The said Secretary of State in Council may, pending the grant of a certificate as hereinbefore provided, invest in securities of the ^{Government empowered to capitalize the amount of the pension} ¹[Central Government] the principal sum proportionate to the pension of the said Taj Mahal according to the rate mentioned in the said treaty, and may invest the income from time to time resulting from such securities in like securities

And, thereupon, all further claim to such pension and income shall cease, and the persons obtaining a certificate in manner hereinbefore provided shall be entitled, in lieu of such pension and income, to the securities aforesaid together with the uninvested income (if any) ^{On capitalization all claim to pension barred} which from the date of making such investment has resulted from such securities

18. The said Secretary of State in Council shall, without unnecessary delay, invest, in securities of the ¹[Central Government], all arrears of such pension due at the time of the passing of this Act, and all such arrears falling due thereafter, and before the investment of the principal sum aforesaid. When any such arrears have been invested ^{Arrears of pension accruing before capitalization to be so invested} all further claim in respect thereof shall cease, and the persons obtaining a certificate in manner hereinbefore provided shall, in lieu of such arrears, be entitled to the securities in which they have been invested and the income resulting therefrom

THE MUNICIPAL TAXATION ACT 1881

ACT No. XI of 1881²

[25th February, 1881]

An Act to give power to prohibit the levy of municipal taxes in certain cases

WHEREAS it is expedient to empower the Governor General in Council to prohibit, in certain cases, the levy of municipal taxes payable by persons in the military ³[naval] ⁴[or air force] service or

¹ Subs. by the A. O. for 'G' of I

² For Statement of Objects and Reasons see Gazette of India 1880 Pt. V p. 193, for Proceedings in Council see *ibid* Supplement, pp. 904 and 915, and *ibid* 1881, Supplement p. 250

³ Ins. by the Amending Act 1934 (35 of 1934) s. 2 and Sch.

⁴ Ins. by the Repealing and Amending Act, 1927 (10 of 1927), s. 2 and Sch. I.

by the Secretary of State for India in Council, It is hereby enacted as follows.—

Short title	1. This Act may be called the Municipal Taxation Act, 1881
Local extent	It extends to the whole of British India, 1* * * * *
* Municipal Committee defined	2 In this Act "Municipal Committee" ² includes a Municipal Corporation or a body of Municipal Commissioners constituted by or under the provisions of any enactment for the time being in force
Power to prohibit levy of tax	3. Notwithstanding anything contained in any enactment for the time being in force, the ³ [Central Government] may, by an order in writing, prohibit ⁴ the levy by a Municipal Committee of any specified tax— (a) payable by any person subject to the ⁵ [Army Act, the Indian Army Act, 1911, ⁶ [the Naval Discipline Act or that Act as modified by the Indian Navy (Discipline) Act, 1934] ⁷ [the Air Force Act or the Indian Air Force Act, 1932] of ⁸ [naval] who is compelled by the exigencies of military ⁶ [naval] ⁸ [or air force] duty to reside within the limits of a municipality;

9* * * * *

The ³[Central Government] may, by a like order, rescind any such prohibition.

¹ The words and shall come into force at once rep by the Repealing and Amending Act, 1914 (10 of 1914)

² For the purposes of this Act every Cantonment Board as defined in the Cantonments Act 1884 (2 of 1884) is deemed to be a Municipal Committee, *see* s. 97 of the latter Act

³ Subs by the A O for G G in C'

⁴ For instance of such orders relating to the Military, *see* Gen R and O, Vol II, p. 278, for exemption of bicycles and tricycles used by non commissioned officers and soldiers *see* *ibid*

⁵ Subs for 'Army Discipline and Regulation Act 1879 or the Indian Articles of War by the Repealing and Amending Act 1927 (10 of 1927), s. 2 and Sch. I

⁶ Ins by the Amending Act 1934 (35 of 1934) s. 2 and Sch.

⁷ Subs for 'or the Air Force Act by the Indian Air Force Act 1932 (14 of 1932) s. 130 and Sch.

⁸ Ins by the Repealing and Amending Act 1927 (10 of 1927), s. 2 and Sch. I

⁹ The words 'or (b) payable by the Secretary of State for India in Council' rep by the A O

¹[3A Notwithstanding anything in any enactment for the time being in force the Provincial Government may by an order in writing prohibit the levy by a Municipal Committee of any specified tax payable by the Provincial Government and may by a like order rescind any such prohibition]

Power of Provincial Government to prohibit levy of taxes on it

4 So long as any order made under section 3 prohibiting the levy of a tax on any person mentioned in 2* * * * that section remains in force the ³[Central Government] shall be liable to pay to the Municipal Committee mentioned in the order the amount which otherwise would have been payable to such Committee by such person

Central Government to pay taxes referred to in section 3

Provided that the ⁴[Central Government] shall not be liable to pay any sum in respect of any horse which such person is bound by the regulations of the service to which he belongs to keep

5 So long as any order made under ⁵[section 3A] prohibiting the levy of any tax payable by the ³[Provincial Government] remains in force the said ⁶[Provincial Government] shall be liable to pay to the Municipal Committee in lieu of such tax such sums (if any) as an officer from time to time appointed in this behalf by the ⁷[Provincial Government] may, having regard to all the circumstances of the case from time to time determine to be fair and reasonable

Payments to be made in lieu of taxes referred to in section 3A

6 If any question arises whether any duty is military ⁸[naval] ⁹[or air force] duty within the meaning of this Act the decision of the ¹⁰[Central Government] thereon shall be conclusive

Decision of questions arising under this Act

If any question arises whether any person is compelled as aforesaid to reside within the limits of a municipality or is bound as aforesaid to keep any horse the decision thereon of such authority as the ¹⁰[Central Government] may from time to time appoint in this behalf shall be conclusive

¹ Ins by the A O

² The words *cl. 2 (a)* of *rep* by the A O

³ Subs by the A O for Secretary of State for India in Council

⁴ Subs by the A O for said Secretary of State in Council

⁵ Subs by the A O for section 3

⁶ Subs by the A O for Secretary of State in Council

⁷ Subs by the A O for L G

⁸ Ins by the Amending Act 1934 (35 of 1934) s 2 and Sch.

⁹ Ins by the Repealing and Amending Act 1977 (10 of 1977) s 2 and Sch I

¹⁰ Subs by the A O for G G in C

THE FORT WILLIAM ACT, 1881

ACT No XIII OF 1881¹

[11th March, 1881]

An Act to provide for the better government of Fort William

Preamble

Whereas it is expedient to give power to make rules for the better government of Fort William in Bengal, and to provide for the establishment of a Court within the said Fort for the trial of persons charged with breaches of such rules, It is hereby enacted as follows —

Short title

1. This Act may be called the Fort William Act, 1881;

Commence-
ment

And it shall come into force on the first day of April, 1881

But nothing herein contained shall be deemed to confer jurisdiction over any persons (other than artificers, labourers, sutlers and followers) to whom the ²[Army Act] or the Indian Articles of War, 1869,³ is or are applicable

‘The Fort’

2. The ⁴[Central Government] may, from time to time, by notification in the ⁵[Official Gazette], define, for the purposes of this Act, the limits of Fort William in Bengal, and in this Act the expression “the Fort” means the area so defined

44
V₁
50Commander
in Chief
may make
rules

3. The Commander in Chief in India may, from time to time, with the sanction of the ⁴[Central Government], make rules, to be in force within the Fort, in regard to the matters specified in the Schedule hereto annexed and other matters of a like nature, and may by such rules prescribe, as penalties for the infringement thereof, fine which may extend to fifty rupees, or imprisonment for a term which may extend to four days, or both

When a sentence of fine is passed under any such rule, the term for which the Court directs the offender to be imprisoned in default of payment of such fine may extend to, and shall not exceed, four days

When any rule is made under this section, a copy thereof, in English and such other languages as the ⁴[Central Government] may from

¹ For Statement of Objects and Reasons see Gazette of India 1881 Pt V p 49 and for Proceedings in Council, see *ibid* 1881, Supplement, pp 50, 96 260 and 384

² Subs by the Repealing and Amending Act 1903 (1 of 1903), s 3 and Sch II, for ‘Army Discipline and Regulation Act 1879’

³ See now the Indian Army Act 1911 (8 of 1911)

⁴ Subs by the A O for G G in C

⁵ Subs by the A O for Gazette of India

time to time direct, shall be exhibited in such conspicuous places with in the Fort as the Officer Commanding the Fort may from time to time direct.

4 The ¹[Central Government] may invest any commissioned officer in Her Majesty's Army with power to try persons charged with any *infringement of the rules made under section 3*

Central Government may invest officer with power to try breaches of rules

The officer so invested is hereinafter called the Fort Magistrate

5. In all cases under this Act, the Fort Magistrate shall, except as herein otherwise provided, exercise within the Fort the powers, and as nearly as may be, follow the procedure conferred on, and prescribed for, a Presidency Magistrate by the ²[Code of Criminal Procedure, 1898], and, subject to the power conferred by ³[section 526 of that Code], every finding, sentence or order of such Magistrate under this Act shall be final

Procedure to be followed

6. Any police officer, or any other person empowered in this behalf by the ¹[Central Government] by name or as a member of a specified class, may arrest without warrant any person who in his sight commits an offence punishable under this Act

Power to arrest without warrant

Every person so arrested shall be taken to the police station within the Fort and shall be detained there until he gives to the police officer in charge of such station a bond with or without sureties, as such officer may require for a sum not exceeding one hundred rupees, to appear before the Fort Magistrate at a time to be specified in such bond, or until he can be brought before such Magistrate

Power to police officer to release on bail

7. Nothing in this Act, or in any rule made hereunder shall affect the jurisdiction of the ⁴[Presidency Magistrates] or shall prevent any person from being prosecuted under any other law for any offence punishable under this Act, or from being liable to any other punishment than is provided for such offence by this Act

Jurisdiction of Presidency Magistrates and prosecutions under other laws saved

Provided that no person shall be punished twice for the same offence

8 No prosecution for any offence under this Act shall be commenced after the expiration of three months next after such offence has been committed

Limitation of time for prosecution under Act

9 (*Validation of penalties heretofore imposed by Garrison Quarter Master*) *Rep by the Amending Act 1891 (VII of 1891)*

¹ Subs by the A O for G G in C

² Subs for Presidency Magistrates Act 1877 by the Peeping and Amending Act 1903 (1 of 1903) s 3 and Sch II

³ Subs for the High Courts Criminal Procedure Act 1873 section 147, *ibid*

⁴ Subs for Magistrates appointed under the Presidency Magistrate Act, 1877 *ibid*

THE SCHEDULE

(See section 3)

(1) Throwing dirt or rubbish of any description into the drain or roads, or anywhere but in the appointed places

(2) Removing night soil without a covering or at unauthorised hours

(3) Camp followers, servants, and others not keeping the godowns they live in clean

(4) Performing offices of nature in other than the appointed place

(5) Bathing, or washing clothes or animals, in the *cunctie* or other unauthorised places

(6) Selling unwholesome articles of food grain or drink

(7) Adulterating food or drinks

(8) Making evacuations in unauthorised place.

(9) Rash or negligent driving

(10) Picketing, training or breaking in animals

(11) Causing obstruction by vehicles on the road

(12) Exposing or hawking articles for sale about the roads and barracks or within the Fort without a Fort pass

(13) Beating drums or tom toms

(14) Damaging lamps posts, masonry or other Government property in any part of the Fort

(15) Disorderly behaviour in the public thoroughfares

(16) Gambling

(17) Spitting *pan* on any of the public staircases, gateways, walls and verandahs or defacing in any way the walls of barracks, building or gateways

(18) Throwing slops into the drains

(19) Washing cooking pots at the water taps and wasting water

(20) Cooking in unauthorised places

(21) Hanging clothes to dry on the guns or masonry work

(22) Laying out clothes accoutrements or stable bedding after the authorised hours

(23) Destroying the trees bushes or plants or climbing trees

(24) Servants smoking *hookas* in their masters quarters or cook houses, or keeping such quarters or cook houses in an insanitary state

- (25) Trespassing on parade grounds or making foot paths across the grass plots
- (26) Being drunk and incapable
- (27) Fighting quarrelling and creating a disturbance or making unnecessary noise of any kind
- (28) Affixing bills and papers on any walls in the Fort
- (29) Cutting grass or interfering with the grass contractor
- (30) Declining to show a tin pass when called upon to do so
- (31) Being found in the garrison without a tin pass or being in possession of a ticket belonging to another
- (32) Driving vehicles without lights or with insufficiently greased wheels
- (33) Swinging or sitting on the chain fences
- (34) Interfering in any way with the guns carriages or piles of shot and shell on the works or with the packed ordnance
- (35) Mounting the ramparts or parapets or entering the embrasures without authority
- (36) Smuggling liquor into the Fort
- (37) Burning stable litter or lighting fires except in authorised places and at authorised hours
- (38) Carrying lights except in closed lanterns or letting off fireworks
- (39) Removing property of any kind or description from the Fort without written authority
- (40) Allowing animals of any sort to stray into the Fort or to graze within the same
- (41) Slaughtering animals or exposing carcasses or offal within the Fort
- (42) Keeping dogs or poultry in unauthorised places
- (43) Buying selling or receiving any portion of a soldier's kit
- (44) Disobedience of lawful authority in failing to attend to authorised instructions of the police or of the several sentries posted throughout the Fort
- (45) Occupying buildings of any kind without proper allotment

THE OBSTRUCTIONS IN FAIRWAYS ACT, 1881

ACT No XVI OF 1881 ¹

[15th March 1881]

An Act to empower the Government to remove or destroy obstructions in fairways, and to prevent the creation of such obstructions

Preamble

WHEREAS it is expedient to empower the Government to remove or destroy obstructions to navigation in fairways leading to ports in British India, and to prevent the creation of such obstructions: It is hereby enacted as follows —

Short title

1 This Act may be called the Obstructions in Fairways Act 1881.

2* * * *

But nothing herein contained shall apply to vessels ³[belonging to, or hired by a contract made on behalf of, the Crown]

Central Government empowered to remove or destroy obstruction in fairway

2 Whenever, in any fairway leading to any port in British India, any vessel is sunk, stranded or abandoned, or any fishing stake, timber or other thing is placed or left, ⁴[the Central Government] may, if in its opinion such thing is, or is likely to become, an obstruction or danger to navigation,—

(a) cause such thing or any part thereof to be removed, or

(b) if such thing is of such a description or so situate that ⁵[in the opinion of the Central Government], it is not worth removing, cause the same or any part thereof to be destroyed

Central Government entitled to expenses incurred in removing obstruction

3 Whenever anything is removed under section 2, ⁶[the Central Government] shall be entitled to receive a reasonable sum, having regard to all the circumstances of the case, for the expenses incurred in respect of such removal

Dispute concerning such expenses

Any dispute arising concerning the amount due under this section, in respect of anything so removed, shall be decided by the District Magistrate or Presidency Magistrate having jurisdiction at the place

¹ For the Statement of Objects and Reasons, see Gazette of India 1881, Pt V, p 3, for Proceedings in Council see *ibid*, 1881 Supplement pp 19 and 40s

² The words "and it shall come into force at once" rep by the Repealing and Amending Act 1914 (20 of 1914)

³ Subs by the A O for belonging to her Majesty or hired by Her Majesty or by the Secretary of State for India in Council

⁴ Subs by the A O for the L G of the part of British India in which such port is situate

⁵ Subs by the A O for "in the opinion of the L G"

⁶ Subs by the A O for "the Govt"

where such thing is, upon application to him for that purpose by either of the disputing parties, and such decision shall be final

4 The ¹[Central Government] shall, whenever anything is removed under section 2 publish in the ²[Official Gazette] a notification containing a description of such thing, and the time at which and the place from which the same was so removed

Notice of removal to be given by Central Government

5 If after publishing such notification such thing is unclaimed or

Things removed may in certain cases be sold

if the person claiming the same fails to pay the amount due for the said expenses and any customs duties or other charges properly incurred by the ¹[Central Government] in respect thereof

the ¹[Central Government] may sell such thing by public auction if it is of a perishable nature forthwith and if it is not of a perishable nature at any time not less than six months after publishing such notification as aforesaid

6 On realizing the proceeds of such sale the amount due for expenses and charges as aforesaid together with the expenses of the sale shall be deducted therefrom and the surplus (if any) shall be paid to the owner of the thing sold or if no such person appear and claim such surplus shall be held in deposit for payment without interest to any person thereafter establishing his right to the same

Proceeds how applied

Provided that he makes the claim within one year from the date of the sale

7 For the purposes of this Act the term vessel shall be deemed to include also every article or thing or collection of things being or forming part of the tackle equipment cargo stores or ballast of a vessel and any proceeds arising from the sale of a vessel and of the cargo thereof or of any other property recovered therefrom shall be regarded as a common fund

Vessel to include tackle cargo etc

8 The ³[Central Government] may from time to time by notification in the ⁴[Official Gazette] make rules to regulate or prohibit in any fairway leading to a port in British India the placing of fishing stakes, the casting or throwing of ballast rubbish or any other thing likely to give rise to a bank or shoal or the doing of any other act which will in ⁵[its] opinion cause or be likely to cause obstruction or danger to navigation

Power to make rules to regulate and prohibit the placing of obstructions in fairways

¹ Subs by the A O for L G

² Subs by the A O for local official Gazette

³ Subs by the A O for G G in C

⁴ Subs by the A O for Gazette of India

⁵ Subs by the A O for his

Penalty
for breach
of such
rules

9 Whoever is guilty of any act or omission in contravention of the rules made under section 8 may be tried for such offence in any district or presidency town in which he is found and shall be punished with imprisonment for a term which may extend to six months or with fine which may extend to five hundred rupees or with both

Compensation payable in certain cases for damage caused under this Act

10 Whenever the maintenance or creation of an obstruction in any fairway has become lawful by long usage or otherwise and such obstruction is removed or destroyed under section 2, or its creation is regulated or prohibited under section 8, any person having a right to maintain or create such obstruction shall be entitled to receive from the ¹[Central Government] reasonable compensation for any damage caused to him by such removal, destruction, regulation or prohibition

Every dispute arising concerning the right to such compensation, or the amount thereof, shall be determined according to the law for the time being in force relating to like disputes in the case of land needed for public purposes² and not otherwise and for the purposes of such law the fairway from or in which such obstruction was removed or destroyed, or in which its creation was regulated or prohibited, shall be deemed to be a part of the presidency town or district in which the port to which such fairway leads is situate

Certain action of the Government previous to passing of this Act to be deemed to have been taken hereunder

11 Whenever any obstruction in a fairway leading to a port in British India has been removed or destroyed, or whenever the creation of any such obstruction has been regulated or prohibited, by an order of the ³[Central Government] or a ⁴[Provincial Government] previous to the passing of this Act, such removal destruction regulation or prohibition shall be deemed to have been effected under this Act

Saving of other powers possessed by Central Government

12 Nothing herein contained shall be deemed to prevent the exercise by ⁵[the Central Government] of any other powers possessed by it in this behalf

Application to fairways in inland waterways

⁶[13 All references in this Act to the Central Government shall, in relation to fairways in inland waterways be construed as references to the Provincial Government concerned]

¹ Subs by the A O for Secretary of State for India in Council

² See the Land Acquisition Act 1894 (I of 1894)

³ Subs by the A O for C C 11 C

⁴ Subs by the A O for L G

⁵ Subs by the A O for the Govt

⁶ Ins by the A O

THE BROACH AND KAIRA INCUMBERED ESTATES ACT, 1881

CONTENTS

PREAMBLE

CHAPTER I

PRELIMINARY

SECTIONS

- 1 Short title
Commencement
- 2 [*Repealed*]
- 3 Interpretation clause

CHAPTER II

OF THE APPLICATION AND PRELIMINARY INQUIRY

- 4 Application for benefit of Act
- 5 Order to inquire
- 5 Verified statement to be submitted
False averments in statement
- 7 Report of inquiry and proceedings thereon

CHAPTER III

OF THE ORDER OF MANAGEMENT

- 8 "Order of management to what it extends
Commencement of management
- 9 Effect of order of management
Stay of pending proceedings etc
Bar of fresh proceedings
The debtor incompetent—
to contract debts,
to incumber or alienate property,
to grant receipts for rent
Persons other than manager incompetent to incumber or
alienate property
- 10 Manager to have powers of owner and to receive rents and profits, to have powers of Collector for their recovery.

SECTIONS

- 11 Manager to pay therefrom—
costs of management and repairs
Government revenue, etc ,
rent due to superior holder.
allowance for maintenance and expenses of debtor and family,
cost of improvements etc
Residue how disposed of
-

CHAPTER IV

PROOF OF DEBTS AND SCHEME FOR LIQUIDATION

- 12 Notice to claimants against debtor
Copies of notice to be exhibited
13 Claim to contain full particulars
Documents to be given up
Entries in books
Power to exclude documents not produced with claim
14 Claim not duly notified to be barred
Admission of claims within further period of six months
15 Determination of debts and liabilities
16 Power to rank debts and to fix interest
17 Scheme for liquidation
Provisions of scheme
18 Proceedings of Commissioner on submission of scheme
19 Power to relinquish management
-

CHAPTER V

OF THE PROCEEDINGS SUBSEQUENT TO SANCTION OF THE LIQUIDATION
SCHEME

- 20 Effects of sanctioning scheme
21 Power to remove mortgagee in possession
22 Power to inquire into consideration given for leases

SECTIONS

- 23 Power to lease
- 24 Power to raise money by mortgage or sale
- 25 Manager's receipt a discharge
- 26 Termination of management
Restoration of owner
- 27 Death of debtor during management
- 28 Mortgages etc made by restored Thakur valid only for his life

 CHAPTER VI

OF APPEAL AND REVISION

- 29 Appeal
- 30 Power to call for proceedings and pass order thereon

 CHAPTER VII

MISCELLANEOUS

- 31 Power to make rules
- 32 Power to appoint new manager
- 33 Managers and their agents to be public servants
- 34 Investigation a judicial proceeding
- 35 Power to summon witnesses and compel production of documents
- 36 Bar of suits
- 37 Saving of jurisdiction of Courts in Broach and Kaira in respect of certain suits
- 38 Exemption of certain Thakurs from certain provisions of Act

(Chapter I—Preliminary.)

ACT No. XXI OF 1881.¹

[7th September, 1881.]

An Act to amend the law providing for the relief of Thakurs in the Districts of Broach and Kaira.

Preamble

WHEREAS it is expedient to amend the law providing for the relief of Thakurs in the Districts of Broach and Kaira; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title

1. This Act may be called the Broach and Kaira Incumbered Estates Act, 1881:

Commence-
ment

and it shall come into force on the passing thereof.

2. [Partial Repeal of Act XIV of 1877] Rep. by the Repealing Act, 1938 (I of 1938), s. 2 and Sch.

Interpre-
tation
clause

3. In this Act—

“thākūr” means also Tālukdār, Jágirdār and kāsbatī, and such other classes of holders of estate as the ²[Provincial Government] may 3* * * declare to be thākurs for the purposes of this Act:

“heir” means the person for the time being entitled as heir to a thākūr:

“Commissioner” means the Revenue Commissioner of the Northern Division of the Presidency of Bombay.

¹ For Statement of Objects and Reasons see Gazette of India 1881, Pt V, p 953, and for Proceedings in Council, see *ibid*, Supplement, pp 435, 451, 1060 and 1092

This Act is not in force in the Panch Mahals—see the Panch Mahals Laws Act, 1885 (7 of 1885), s 2 (1)

² Subs by the A. O for “L. G.”

³ The words “with the previous sanction of the G. O. in C.” rep by s 2 and Sch I of the Devolution Act, 1920 (33 of 1920)

(Chapter II—Of the Application and Preliminary Inquiry)

CHAPTER II

OF THE APPLICATION AND PRELIMINARY INQUIRY

4 At any time within six months after the passing of this Act, any thikur, or any person who would be sole heir or one of the heirs to such thikur if he then died intestate may apply in writing to the Commissioner stating that such thikur is subject to debts or liabilities other than debts due or liabilities incurred to 1[the Crown] or that his immoveable property is charged with debts or liabilities other than as aforesaid, and requesting that the provisions of this Act be applied to his case Application for benefit of Act.

When any thikur or other person entitled to make an application under this section is a minor or of unsound mind or an idiot such application may be made on his behalf by the guardian or other legal curator of his person or by the legally constituted administrator or manager of his estate

5 When any such application is made by or on behalf of a thikur or the person who would be his sole heir if he then died the Commissioner shall direct an inquiry to be made by such officer as he thinks fit into the nature and amount of such debts and liabilities and the sufficiency of the debtor's property whether moveable or immovable to discharge the same Order to inquire

When such an application is made in any other case it shall be in the discretion of the Commissioner subject to any general rules which may from time to time be made by the 2[Provincial Government] in this behalf, either to reject such application or to direct an inquiry to be made as aforesaid

6 When an inquiry has been directed under section 5 the applicant shall within a period to be fixed by the Commissioner submit to the officer appointed to make such inquiry a statement duly verified by the said applicant, or by some other competent person in the manner required by law for the verification of plaints and containing so far as may be practicable such details as to the debts and liabilities and as to the sufficiency of the debtor's property whether moveable or immovable, to meet the same as the Commissioner or the said officer subject to his control may require Verified statement to be submitted

If any such statement contains any averment which the person making the verification knows or believes to be false or does not False averments in statement

1 Subs. by the A. O. for Govt

* Subs. by the A. O. for Council of Bombay in Council

(Chapter II—Of the Application and Preliminary Inquiry Chapter
III—Of the Order of Management)

know or believe to be true, such person shall be deemed to have intentionally given false evidence within the meaning of the Indian Penal Code

Report of inquiry and proceedings thereon

7 The officer so appointed, after making inquiry, shall submit a report of his proceedings to the Commissioner

On receipt of such report, the Commissioner may—

(a) direct a further inquiry, or

(b) dismiss the application, or

(c) by order published in the ¹[Official Gazette] direct that the immoveable property of the debtor shall be managed, and that his debts shall be liquidated, in the manner herein after provided, by a manager

The Taluqdari Settlement officer² for the time being shall, unless the ³[Provincial Government] in any case otherwise directs, be such manager

CHAPTER III

OF THE ORDER OF MANAGEMENT

Order of management, to what it extends

8 Such order (hereinafter called "the order of management") shall extend to all immoveable property of or to which the debtor is on the date of its publication possessed or entitled in his own right, or which he is entitled to redeem or which may be acquired by or devolve on him during the continuance of the management and to all debts and liabilities to which he is subject or which are charged on the whole or any part of his immoveable property on the said date and to the amount of any loan which may be received by the manager from Government in the manner hereinafter provided

The management shall be deemed to commence from the date on which the order is published

9 On the publication of the order of management the following consequences shall ensue

first all proceedings then pending in any Civil Court in British India in respect to the debts and liabilities mentioned in

Commencement of management Effect of order of management Stay of pending process etc

¹ See s. 15 of the A. O. for Bombay Civil Gazette

² As to the officer see the Breach and Kaira Incumbered Estates Act 1877 (14 of 1877) s. 40

³ See s. 15 of the A. O. for B. C.

(Chapter III —Of the Order of Management)

section 8 shall be stayed and the operation of all processes, executions and attachments then in force for or in respect of such debts and liabilities shall be suspended,

secondly so long as the management continues no fresh proceedings processes executions or attachments shall be instituted in or issued by any Civil Court in British India in respect of such debts and liabilities

Bar of fresh proceedings

thirdly so long as the management continues the debtor shall be incompetent—

The debtor incompetent—to contract debts

(a) to enter into any contract involving him in pecuniary liability or

(b) to mortgage charge lease or alienate the property under management or any part thereof or

to incur or alienate property, to grant receipts for rent

(c) to grant valid receipts for the rents and profits arising or accruing therefrom

Provided that nothing contained in this clause shall be deemed to preclude the manager from letting and the debtor from taking the whole or any part of such property on such terms consistent with this Act as may be agreed upon between the parties

fourthly so long as the management continues no person other than the manager shall be competent to mortgage charge, lease or alienate such property or any part thereof

Persons not competent to mortgage charge, lease or alienate such property or any part thereof

10 The manager shall during the management of the property have all powers which the owner thereof might as such have exercised and shall receive and recover all rents and profits due in respect of the property under management

and for the purpose of recovering such rents and profits in addition to any powers possessed by a thalukdar all the powers exercised by a Collector under the law for the time being in force and recovering land revenue due to Government

Provided that he shall not before the liquidation after mentioned has been sanctioned demise the property, or any part thereof for any term exceeding one year or effect in possession

11 From the sums received or recovered under the management the manager shall pay—

first, the cost of the management including the repairs,

(Chapter III—Of the Order of Management Chapter IV—Proof of Debts and Scheme for Liquidation)

Government
revenue
etc.,

secondly, the Government revenue and all debts and liabilities for the time being due or incurred ¹[to the Crown] in respect of the property under management,

rent due
to superior
holder,

thirdly, the rent (if any) due to any superior holder in respect of the said property,

allowance
for main-
tenance and
expenses of
debtor and
family

fourthly, such periodical allowance as the Commissioner may from time to time fix for the maintenance and other necessary expenses of the debtor and of such members of his family as the Commissioner directs,

cost of im-
provements
etc

fifthly, the cost of such improvements of the said property as he thinks necessary, and is so approved by the Commissioner

Debt due
to
disposed of

The residue shall be retained by the manager for the liquidation, in manner hereinafter provided, of the debts and liabilities mentioned in section 8, other than those so due or incurred ¹[to the Crown], and also for the repayment either before or after the liquidation of such debts and liabilities of any loan received from Government by the manager under this Act

CHAPTER IV

PROOF OF DEBTS AND SCHEME FOR LIQUIDATION

Notice to
claimants
against
debtor

12 On the publication of the order of management the manager shall publish in the ²[Official Gazette] a notice in English and Gujarati calling upon all persons having claims against the debtor or the property under management to notify the same in writing to such manager within six months from the date of the publication

Copies of
notice to
be ex-
hibited

He shall also cause copies of such notice to be exhibited at the Mamlatdars kacharis in the district in which the said property lies, and at such other places as he thinks fit

Claim to
be
full parti-
culars

13 Every such claimant shall, along with his claim, present full particulars thereof

Documents
to be
given up

Every document on which the claimant founds his claim, or on which he relies in support thereof shall be delivered to the manager along with the claim

Entries
in books

If the document be an entry in any book the claimant shall produce the book to the manager together with a copy of the entry on

¹ Inserted by the A. O. for the Govt.

² Inserted by the A. O. for the Bombay Govt. Gazette.

(Chapter II) —Proof of Debts and Scheme for Liquidation)

which he relies. The manager shall mark the book for the purpose of identification, and, after examining and comparing the copy with the original shall return the book to the claimant.

If any document in the possession or under the control of the claimant is not delivered or produced by him to the manager along with the claim the manager may refuse to receive such document in evidence on the claimant's behalf at the investigation of the case.

Power to exclude documents not produced with claim

14 Every such claim (other than claims of the ¹[Crown]) not notified to the manager within the time and in the manner required by such notice shall except as provided in section 19 clause (d) be deemed for all purposes and on all occasions whether during the continuance of the management or afterwards to have been duly discharged.

Claim not duly notified to be barred

Provided that when proof is made to the manager that the claimant was unable to comply with the provisions of section 12 the manager may receive such claim within the further period of six months from the expiration of the original period of six months.

Admission of claims within further period of six months

15 The Manager shall inquire into the history and merits of every claim received under sections 12 and 14 and shall in accordance with the rules to be made under this Act determine the amount of the debts and liabilities (if any) justly due to the several claimants.

Determination of debts and liabilities

16 If such amount cannot be paid at once the manager shall then proceed to rank such debts and liabilities according to the order in which they shall be paid and to fix the interest (if any) to be paid thereon respectively, from the date of the final decision thereon to the date of the payment and discharge thereof.

Power to rank debts and to fix interest

17 When the total amount of the debts and liabilities (including those due and incurred ²[to the Crown]) has been finally determined the manager shall prepare and submit to the Commissioner a schedule of such debts and liabilities and a scheme (hereinafter called the liquidation scheme) showing the mode in which it is proposed to pay and discharge the same whether from the income of the property under management or with the aid of funds raised under the powers herein after conferred or partly in one of such ways and partly in the other.

Scheme for liquidation

Every such scheme shall further provide for the continuance of the payments to be made by the manager under section 11 and for the repayment of the money (if any) which the manager proposes to borrow from Government under this Act, and may provide for the improvement of the property under management either from the said income, or with

Provisions of scheme

¹ Subs. by the A. O. for Govt.

² Subs. by the A. O. for Govt.

(Chapter IV —Proof of Debts and Scheme for Liquidation Chapter V —Of the Proceedings subsequent to sanction of the Liquidation-scheme)

the aid of the funds raised as aforesaid, or partly in one of such ways and partly in the other

Proceedings of Commissioner on submission of scheme

18 The Commissioner may—

- (a) as often as he thinks fit send back such scheme to the manager for revision, and direct him to make such further inquiry as may be requisite for the proper preparation of the scheme, or
- (b) sanction any liquidation scheme, or any revised liquidation-scheme, submitted to him, either as it stands, or subject to such modifications as he may deem expedient

Power to relinquish management

19 At any time before he has sanctioned a liquidation scheme under section 18, the Commissioner may, by an order published in the ¹[Official Gazette], direct that on a date fixed by such order the management shall be relinquished

On the date so fixed—

- (a) the management shall terminate,
- (b) the owner of the property under management shall be restored to the possession thereof, subject to any leases made under section 10,
- (c) any residue of the rents and profits of the said property retained under the last clause of section 11 shall be paid to him, and
- (d) the proceedings, processes, executions and attachments stayed and suspended under section 9, and the debts and liabilities barred by section 14, shall revive

In calculating the periods of limitation applicable to suits to recover and enforce debts and liabilities revived under this section, the time during which the management has continued shall be excluded

CHAPTER V.

OF THE PROCEEDINGS SUBSEQUENT TO SANCTION OF THE LIQUIDATION-Scheme

Effects of sanctioning scheme

20 When the Commissioner sanctions the liquidation scheme, he shall notify the fact of such sanction at such places and in such manner

¹ Subs by the A O for Bombay Govt Gazette

(Chapter I —Of the Proceedings subsequent to sanction of the Liquidation scheme)

as the [Provincial Government] may from time to time by rule direct, and thereupon—

- 1st all proceedings, processes executions and attachments stayed or suspended under section 9 shall be for ever barred, and
- 2nd every debt or liability due or owing to any person which was provable before the manager shall be extinguished and such person shall be entitled to receive under the liquidation scheme the amount (if any) finally awarded to him under Chapter IV of this Act in respect of such debt or liability

21 If the property under management or any part thereof be in the possession of a mortgagee or conditional vendee the manager at any time after the liquidation scheme has been sanctioned as aforesaid may by an order in writing, require such incumbrancer to deliver up possession of the same to him at the end of the then current revenue year

Power to remove mortgagee in possession

If such incumbrancer refuse or neglect to obey such order the manager may without resorting to a Civil Court enter upon the property and summarily evict therefrom the said incumbrancer and any other person obstructing or resisting on his behalf

Nothing in this section shall be held to affect the right of any incumbrancer to receive, under the liquidation scheme the amount (if any) awarded to him under Chapter IV of this Act

22 If the property under management or any part thereof be in the possession of any person claiming to hold under a lease dated within the three years immediately preceding the commencement of the management the manager may inquire into the sufficiency of the consideration for which the lease was given and if such consideration appear to him insufficient may by order with the consent of the Commissioner at any time after the liquidation scheme has been sanctioned as aforesaid either set aside the lease or require the person so in possession to pay such consideration for the said lease as the manager thinks fit and in default of such payment the lease shall be cancelled

Power to inquire into consideration given for leases

23 Subject to the rules made under section 31 the manager, after the liquidation scheme has been sanctioned as aforesaid shall have power to demise all or any part of the property under management for any term of years not exceeding twenty years absolute to take effect in possession, in consideration of the payment to him of any fine or without fine, and reserving such rents and under such conditions as may be agreed upon

Power to lease

(Chapter VII — Miscellaneous)

- (b) to regulate the procedure in all cases under this Act,
- (c) for the guidance of officers inquiring into and determining on claims under Chapter IV of this Act, and in particular as to the allowance of interest (if any) on each of the principal debts and liabilities so determined, from the date on which it was incurred down to the date of the determination, and on the aggregate amount of such debts and liabilities from the date of the determination down to the date of payment, and as to the order of paying debts and liabilities and repaying any loan received hereunder from Government,
- (d) for investing any moneys received or raised by the manager under this Act in any Government securities of British India, and for the sale of such securities and
- (e) generally to carry out the provisions of this Act

Such rules shall be published in the ¹[Official Gazette] and when so published shall have the force of law

32 The ²[Provincial Government] may suspend or remove any manager, and may appoint any officer in the stead of any manager appointed under this Act, and thereupon the management then vested under this Act in the former manager shall become vested in the new manager

Every such new manager shall have the same powers as if he had been originally appointed

33 Every manager appointed under this Act and every agent of such manager shall be deemed a public servant within the meaning of the Indian Penal Code

XLV of
1860

34 Every investigation conducted by the manager with reference to any claim preferred before him under this Act, or to any matter connected with any such claim, shall be taken to be a judicial proceeding within the meaning of the Indian Penal Code

XLV of
1860

35 For the purposes of this Act, the manager and any officer making an inquiry under section 5 may summon and enforce the attendance of witnesses and compel them to give evidence, and compel the production of documents by the same means and as far as possible in the same manner as is provided in the case of a Civil Court by the ³Code of Civil Procedure

¹ Subs. by the A. O. for Bombay Govt Gazette

² Subs. by the A. O. for F. G. S.

³ See now the Code of Civil Procedure 1908 (5 of 1907)

Power to
appoint
new
manager

Managers
and their
agents to
be public
servants

Investiga-
tion a
judicial
proceeding

Power to
summon
witnesses
and compel
production
of docu-
ments

(Chapter VII.—Miscellaneous)

1881: Act XXV.]

Banki Laws

36 No suit or other proceeding shall be maintained against any Bar of suits person in respect of anything done by him *bona fide* pursuant to this Act

37 Nothing in this Act precludes the Courts in Broach and Kaira Saving of having jurisdiction in suits relating to the succession to any immove- jurisdiction of Courts able property brought under the operation of this Act from entertaining in Broach and Kaira in respect of certain suits and disposing of such suits, but to all such suits the manager of such property shall be made a party

38 Nothing in section 9 shall be deemed to render any of the follow- ing thákurs namely, the thákur of Ahmod, the thakur of Sarod, the thakur of Kerwára, the thakur of Dehej, and the thákur of Jamádra, incompetent to enter into contracts involving him in pecuniary liability nor shall anything in section 28 apply to any of the said thákurs

Exemption of certain thákurs from certain provisions of Act

Provided that if any such thákur has since the scheme for the settlement of his debts and liabilities was approved under section 11 of the said ¹Act No XV of 1871, entered into any contract involving him in pecuniary liability exceeding the average annual income derived during the previous five years from immoveable property after deducting therefrom the land tax and other dues ²[of the Crown] the ³[Provincial Government] may by notification in the ⁴[Official Gazette] declare that the exemption made by the former part of this section shall cease in his case, and thereupon such exemption shall cease accordingly

THE BANKI LAWS ACT 1881

ACT No XXV OF 1881 ⁵

[27th October, 1881]

An Act to amend the law in the Mahal of Banki

Whereas it has been determined to annex the territory comprised in Preamble the mahal of Banki to the district of Cuttack

¹ Act 15 of 1871 was rep. by the Broach and Kaira Incumbered Estates Act 1877 (14 of 1877)

² Subs. by the A. O. for 'of Govt.'

³ Subs. by the A. O. for 'L. G.'

⁴ Subs. by the A. O. for 'Bombay Govt. Gazette'

⁵ For Statement of Objects and Reasons see Gazette of India, 1881 Part V, p. 991 and for Proceedings in Council, see *ibid*, Supplement, 1881, pp. 637, 647 and 1244

Negotiable Instruments

[1881: Act XXVI.

And whereas the said territory forms portion of a scheduled district under the Scheduled Districts Act, 1874¹

XIV of 18

And whereas it is expedient that the law in force in the said territory should, on such annexation, be the same as the law in force in the district of Cuttack, and that the said territory should cease to be a portion of a scheduled district,

It is hereby enacted as follows —

Short title

1. This Act may be called the Banki Laws Act, 1881

Laws of Cuttack to apply

2 All enactments which shall, on the first day of April, 1882, be in force in the district of Cuttack and not in the said territory shall be deemed to come into force in the said territory on that day

Other laws repealed

And all enactments which shall on that day be in force in the said territory and not in the district of Cuttack shall be deemed to be repealed on and from that day in the said territory

3 [*Pending proceedings*] *Rep by the Amending Act, 1891 (XII of 1891)*

Territory to cease to be a scheduled district

4 On and from the said first day of April, 1882, the said territory shall cease to be a portion of a scheduled district, and in Part III of the first schedule to the said Scheduled Districts Act, 1874,¹ for the words "Mahals of Angul and Banki," the words "Mahal of Angul" shall be substituted,

XIV of 18

2* * * * *

THE NEGOTIABLE INSTRUMENTS ACT, 1881

CONTENTS

PREFACE

CHAPTER I

PRELIMINARY.

SECTIONS

1 Short title

Local extent

Saving of usages relating to hundis, etc

Commencement

2 [*Repealed*]

3 Interpretation-clause

¹ Rep by the A O

¹ The remainder of s 4 (relating to the repeal of references to Banki in Regulations 12 and 13 of 1865 and 11 of 1816 rep by the Amending Act, 1891 (12 of 1891)

CHAPTER II

OF NOTES, BILLS AND CHEQUES

SECTIONS

- 4 "Promissory note "
- 5 "Bill of exchange "
- 6 "Cheque "
- 7 Drawer "
- "Drawee "
- "Drawee in case of need "
- "Acceptor
- "Acceptor for honour "
- "Payee "
- 8 Holder
- 9 "Holder in due course "
- 10 "Payment in due course
- 11 Inland instrument
- 12 Foreign instrument
- 13 Negotiable instrument
- 14 Negotiation
- 15 Indorsement
- 16 Indorsement in blank and in full
- Indorsee
- 17 Ambiguous instruments
- 18 Where amount is stated differently in figures and words
- 19 Instruments payable on demand
- 20 Inchoate stamped instruments
- 21 At sight
- On presentment
- ' After sight
- 22 Maturity
- Days of grace
- 23 Calculating maturity of bill or note payable so many months after date or sight
- 24 Calculating maturity of bill or note payable so many days after date or sight
- 25 When day of maturity is a holiday

CHAPTER III

PARTIES TO NOTES BILLS AND CHEQUES

SECTIONS

- 26 Capacity to make etc promissory notes etc
Minor
- 27 Agency
- 28 Liability of agent signing
- 29 Liability of legal representative signing
- 30 Liability of drawer
- 31 Liability of drawee of cheque
- 32 Liability of maker of note and acceptor of bill
- 33 Only drawee can be acceptor except in need or for honour
- 34 Acceptance by several drawees not partners
- 35 Liability of indorser
- 36 Liability of prior parties to holder in due course
- 37 Maker drawer and acceptor principals
- 38 Prior party a principal in respect of each subsequent party
- 39 Suretyship
- 40 Discharge of indorser's liability
- 41 Acceptor bound although indorsement forged
- 42 Acceptance of bill drawn in fictitious name
- 43 Negotiable instrument made etc without consideration
- 44 Partial absence or failure of money consideration
- 45 Partial failure of consideration not consisting of money
- 46 Holder's right to duplicate of lost bill

CHAPTER IV

OF NEGOTIATION

- 46 Delivery
- 47 Negotiation by delivery
- 48 Negotiation by indorsement
- 49 Conversion of indorsement in blank into indorsement in full
- 50 Effect of indorsement
- 51 Who may negotiate

SECTIONS

- 52 Indorser who excludes his own liability or makes it conditional
- 53 Holder deriving title from holder in due course
- 54 Instrument indorsed in blank
- 55 Conversion of indorsement in blank into indorsement in full
- 56 Indorsement for part of sum due
- 57 Legal representative cannot by delivery only negotiate instrument indorsed by deceased
- 58 Instrument obtained by unlawful means or for unlawful consideration
- 59 Instrument acquired after dishonour or when overdue
Accommodation note or bill
- 60 Instrument negotiable till payment or satisfaction

CHAPTER V
OF PRESENTMENT

- 61 Presentment for acceptance
- 62 Presentment of promissory note for sight
- 63 Drawee's time for deliberation
- 64 Presentment for payment
- 65 Hours for presentment
- 66 Presentment for payment of instrument payable after date or sight
- 67 Presentment for payment of promissory note payable by instalments
- 68 Presentment for payment of instrument payable at specified place and not elsewhere
- 69 Instrument payable at specified place
- 70 Presentment where no exclusive place specified
- 71 Presentment when maker etc. has no known place of business or residence
- 72 Presentment of cheque to charge drawer
- 73 Presentment of cheque to charge any other person
- 74 Presentment of instrument payable on demand
- 75 Presentment by or to agent representative of decedent or assignee of insolvent

CHAPTER III

PARTIES TO NOTES, BILLS AND CHEQUES

SECTIONS

- 26 Capacity to make, etc , promissory notes, etc
Minor
- 27 Agency
- 28 Liability of agent signing
- 29 Liability of legal representative signing
- 30 Liability of drawer
- 31 Liability of drawee of cheque
- 32 Liability of maker of note and acceptor of bill
- 33 Only drawee can be acceptor except in need or for honour
- 34 Acceptance by several drawees not partners
- 35 Liability of indorser
- 36 Liability of prior parties to holder in due course
- 37 Maker, drawer and acceptor principals
- 38 Prior party a principal in respect of each subsequent party
- 39 Suretyship
- 40 Discharge of indorser's liability
- 41 Acceptor bound although indorsement forged
- 42 Acceptance of bill drawn in fictitious name
- 43 Negotiable instrument made, etc , without consideration
- 44 Partial absence or failure of money consideration
- 45 Partial failure of consideration not consisting of money
- 45A Holder's right to duplicate of lost bill

CHAPTER IV

OF NEGOTIATION

- 46 Delivery
- 47 Negotiation by delivery
- 48 Negotiation by indorsement
- 49 Conversion of indorsement in blank into indorsement in full
- 50 Effect of indorsement
- 51 Who may negotiate

SECTIONS

- 52 Indorser who excludes his own liability or makes it conditional
 - 53 Holder deriving title from holder in due course
 - 54 Instrument indorsed in blank
 - 55 Conversion of indorsement in blank into indorsement in full
 - 56 Indorsement for part of sum due
 - 57 Legal representative cannot by delivery only negotiate instrument indorsed by deceased
 - 58 Instrument obtained by unlawful means or for unlawful consideration
 - 59 Instrument acquired after dishonour or when overdue
Accommodation note or bill
 - 60 Instrument negotiable till payment or satisfaction
-

CHAPTER V

OF PRESENTMENT

- 61 Presentment for acceptance
- 62 Presentment of promissory note for sight
- 63 Drawee's time for deliberation
- 64 Presentment for payment
- 65 Hours for presentment
- 66 Presentment for payment of instrument payable after date or sight
- 67 Presentment for payment of promissory note payable by instalments
- 68 Presentment for payment of instrument payable at specified place and not elsewhere
- 69 Instrument payable at specified place
- 70 Presentment where no exclusive place specified
- 71 Presentment when maker, etc., has no known place of business or residence
- 72 Presentment of cheque to charge drawer
- 73 Presentment of cheque to charge any other person
- 74 Presentment of instrument payable on demand
- 75 Presentment by or to agent representative of deceased, or assignee of insolvent

CHAPTER III

PARTIES TO NOTES, BILLS AND CHEQUES

SECTIONS

- 26 Capacity to make, etc , promissory notes, etc
Minor
- 27 Agency
- 28 Liability of agent signing
- 29 Liability of legal representative signing
- 30 Liability of drawer
- 31 Liability of drawee of cheque
- 32 Liability of maker of note and acceptor of bill
- 33 Only drawee can be acceptor except in need or for honour
- 34 Acceptance by several drawees not partners
- 35 Liability of indorser
- 36 Liability of prior parties to holder in due course
- 37 Maker, drawer and acceptor principals
- 38 Prior party a principal in respect of each subsequent party
- 39 Suretyship
- 40 Discharge of indorser's liability
- 41 Acceptor bound, although indorsement forged
- 42 Acceptance of bill drawn in fictitious name
- 43 Negotiable instrument made etc , without consideration
- 44 Partial absence or failure of money consideration
- 45 Partial failure of consideration not consisting of money
- 45A Holder's right to duplicate of lost bill

CHAPTER IV

OF NEGOTIATION

- 46 Delivery
- 47 Negotiation by delivery
- 48 Negotiation by indorsement
- 49 Conversion of indorsement in blank into indorsement in full
- 50 Effect of indorsement
- 51 Who may negotiate

SECTIONS

- 52 Indorser who exclude his own liability or makes it conditional
- 53 Holder deriving title from holder in due course
- 54 Instrument indorsed in blank
- 55 Conversion of indorsement in blank into indorsement in full
- 56 Indorsement for part of sum due
- 57 Legal representative cannot by delivery only negotiate instrument indorsed by deceased
- 58 Instrument obtained by unlawful means or for unlawful consideration
- 59 Instrument acquired after dishonour or when overdue
Accommodation note or bill
- 60 Instrument negotiable till payment or satisfaction

CHAPTER V
OF PRESENTMENT

- 61 Presentment for acceptance
- 62 Presentment of promissory note for sight
- 63 Drawee's time for deliberation
- 64 Presentment for payment
- 65 Hours for presentment
- 66 Presentment for payment of instrument payable after date or sight
- 67 Presentment for payment of promissory note payable by instalments
- 68 Presentment for payment of instrument payable at specified place and not elsewhere
- 69 *Instrument payable at specified place*
- 70 Presentment where no exclusive place specified
- 71 Presentment when maker, etc., has no known place of business or residence
- 72 Presentment of cheque to charge drawer
- 73 Presentment of cheque to charge any other person
- 74 Presentment of instrument payable on demand
- 75 Presentment by or to agent representative of deceased, or assignee of insolvent

CHAPTER III

PARTIES TO NOTES, BILLS AND CHEQUES

SECTIONS

- 26 Capacity to make, etc , promissory notes, etc
Minor
- 27 Agency
- 28 Liability of agent signing
- 29 Liability of legal representative signing
- 30 Liability of drawer
- 31 Liability of drawee of cheque
- 32 Liability of maker of note and acceptor of bill
- 33 Only drawee can be acceptor except in need or for honour
- 34 Acceptance by several drawees not partners
- 35 Liability of indorser
- 36 Liability of prior parties to holder in due course
- 37 Maker, drawer and acceptor principals
- 38 Prior party a principal in respect of each subsequent party
- 39 Suretyship
- 40 Discharge of indorser's liability
- 41 Acceptor bound although indorsement forged
- 42 Acceptance of bill drawn in fictitious name
- 43 Negotiable instrument made, etc , without consideration
- 44 Partial absence or failure of money consideration
- 45 Partial failure of consideration not consisting of money
- 45A Holder's right to duplicate of lost bill

CHAPTER IV

OF NEGOTIATION

- 46 Delivery
- 47 Negotiation by delivery
- 48 Negotiation by indorsement
- 49 Conversion of indorsement in blank into indorsement in full
- 50 Effect of indorsement
- 51 Who may negotiate

- 63 Drawee's time for deliberation
- 64 Presentment for payment
- 65 Hours for presentment
- 66 Presentment for payment of instrument payable at sight
- 67 Presentment for payment of promissory note payable at a certain time
- 68 Presentment for payment of instrument payable at a certain place and not elsewhere
- 69 Instrument payable at specified place
- 70 Presentment where no exclusive place specified
- 71 Presentment when maker etc. has no known place of business or residence
- 72 Presentment of cheque to charge drawer
- 73 Presentment of cheque to charge any other person
- 74 Presentment of instrument payable on demand
- 75 Presentment by or to agent or representative of deceased, or assignee of insolvent

SECTIONS

- 110 Acceptance not specifying for whose honour it is made
- 111 Liability of acceptor for honour
- 112 When acceptor for honour may be charged
- 113 Payment for honour
- 114 Right of payer for honour
- 115 Drawee in case of need
- 116 Acceptance and payment without protest

CHAPTER XII

OF COMPENSATION

- 117 Rules as to compensation

CHAPTER XIII

SPECIAL RULES OF EVIDENCE

- 118 Presumptions as to negotiable instruments—
 - (a) of consideration,
 - (b) as to date,
 - (c) as to time of acceptance,
 - (d) as to time of transfer,
 - (e) as to order of indorsements,
 - (f) as to stamp,
 - (g) that holder is a holder in due course
- 119 Presumption on proof of protest
- 120 Estoppel against denying original validity of instrument
- 121 Estoppel against denying capacity of payee to indorse
- 122 Estoppel against denying signature or capacity of prior party.

CHAPTER XIV

OF CROSSED CHEQUES

- 123 Cheque crossed generally
- 124 Cheque crossed specially

SECTIONS

- 125 Crossing after issue
 - 126 Payment of cheque crossed generally
Payment of cheque crossed specially
 - 127 Payment of cheque crossed specially more than once
 - 128 Payment in due course of crossed cheque
 - 129 Payment of crossed cheque out of due course
 - 130 Cheque bearing not negotiable
 - 131 Non liability of banker receiving payment of cheque
-

CHAPTER XV

OF BILLS IN SETS

- 132 Set of bills
 - 133 Holder of first acquired part entitled to all
-

CHAPTER XVI

OF INTERNATIONAL LAW

- 134 Law governing liability of maker acceptor or indorser of foreign instrument
 - 135 Law of place of payment governs dishonour
 - 136 Instrument made etc out of British India but in accordance with its law
 - 137 Presumption as to foreign law
-

CHAPTER XVII

NOTARIES PUBLIC

- 139 Power to appoint notaries public
 - 139 Power to make rules for notaries public
-

(Chapter I—Preliminary)

ACT No XXVI OF 1881¹

[9th December 1881]

An Act to define and amend the law relating to Promissory Notes Bills of Exchange and Cheques

Preamble

WHEREAS it is expedient to define and amend the law relating to promissory notes, bills of exchange and cheques It is hereby enacted as follows —

CHAPTER I

PRELIMINARY

Short title

1 This Act may be called the Negotiable Instruments Act 1881

Local extent
Saving of usages relating to hund s etc

It extends to the whole of British India, but nothing herein contained affects the Indian Paper Currency Act 1871 section 21² or III affects any local usage relating to any instrument in an Oriental language Provided that such usages may be excluded by any words in the body of the instrument which indicate an intention that the legal relations of the parties thereto shall be governed by this Act, and it shall come into force on the first day of March 1882

Commencement

2 [Repeal of enactments] Rep by the Amending Act 1891 (XII of 1891)

Interpretation Clause
Banker

3 In this Act—

“banker” includes also persons or a corporation or company acting as bankers and

Notary public

notary public includes also any person appointed by the³[Central Government] to perform the functions of a notary public under this Act

¹ For Statement of Objects and Reasons see Gazette of India 1876 p 1836 for the Reports of the Select Committee see *ibid* 1877 Pt V p 321 1878 Pt V p 145 1879 Pt V, p 75; 1881 Pt V p 85 for discussions in Council see *ibid* 1876 Supplement p 1081 and *ibid* 1881 Supplement p 1409

This Act has been declared to be in force in British Baluchistan by s 3 of the British Baluchistan Laws Regulation 1913 (2 of 1913)

For summary procedure on negotiable instruments see the Code of Civil Procedure 1908 (Act 5 of 1908) Sch I Order XXVII

² Rep. by the Indian Paper Currency Act 1923 (10 of 1923) See now s 31 of the Reserve Bank of India Act 1934 (2 of 1934)

³ Subs. by the A O for the words L G which had been subs. for the words G G in C by the Decentralization Act 1914 (4 of 1914) s 2 and Sch, Pt I

(Chapter II—Of Notes, Bills and Cheques)

CHAPTER II

OF NOTES, BILLS AND CHEQUES

4 A "promissory note is an instrument in writing (not being a bank note or a currency note) containing an unconditional undertaking, signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument

Illustrations

A signs instruments in the following terms

- (a) I promise to pay B or order Rs 500
- (b) I acknowledge myself to be indebted to B in Rs 1000 to be paid on demand for value received
- (c) Mr B I O U Rs 1000
- (d) I promise to pay B Rs 500 and all other sums which shall be due to him
- (e) I promise to pay B Rs 500 first deducting thereout any money which he may owe me
- (f) I promise to pay B Rs 500 seven days after my marriage with C
- (g) I promise to pay B Rs 500 on D's death provided D leaves me enough to pay that sum
- (h) I promise to pay B Rs 500 and to deliver to him my black horse on 1st January next

The instruments respectively marked (a) and (b) are promissory notes. The instruments respectively marked (c) (d) (e) (f) (g) and (h) are not promissory notes.

5 A bill of exchange is an instrument in writing containing an unconditional order signed by the maker directing a certain person to pay a certain sum of money only to or to the order of a certain person or to the bearer of the instrument

Bill of exchange

A promise or order to pay is not conditional within the meaning of this section and section 4 by reason of the time for payment of the amount or any instalment thereof being expressed to be on the lapse of a certain period after the occurrence of a specified event which, according to the ordinary expectation of mankind is certain to happen although the time of its happening may be uncertain.

The sum payable may be certain within the meaning of this section and section 4 although it includes future interest or is payable at an indicated rate of exchange or is according to the course of exchange and although the instrument provides that on default of payment of an instalment, the balance unpaid shall become due.

The person to whom it is clear that the direction is given or that payment is to be made may be a certain person within the meaning of this section and section 4 although he is misnamed or designated by description only.

(Chapter II —Of Notes, Bills and Cheques)

- 'Cheque'** 6 A "cheque" is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand
- 'Drawer'**
'Drawee' 7. The maker of a bill of exchange or cheque is called the "drawer," the person thereby directed to pay is called the "drawee"
- 'Drawee in case of need'** When in the bill or in any indorsement thereon the name of any person is given in addition to the drawee to be resorted to in case of need, such person is called a "drawee in case of need"
- 'Acceptor'** After the drawee of a bill has signed his assent upon the bill, or, if there are more parts thereof than one, upon one of such parts, and delivered the same, or given notice of such signing to the holder or to some person on his behalf, he is called the "acceptor"
- 'Acceptor for honour'** 1[When a bill of exchange has been noted or protested for non-acceptance or for better security,] and any person accepts it *supra protest* for honour of the drawer or of any one of the indorsers, such person is called an "acceptor for honour"
- 'Payee'** The person named in the instrument, to whom or to whose order the money is by the instrument directed to be paid is called the "payee".
- 'Holder'** 8. The "holder" of a promissory note, bill of exchange or cheque means any person entitled in his own name to the possession thereof and to receive or recover the amount due thereon from the parties thereto
- Where the note, bill or cheque is lost or destroyed, its holder is the person so entitled at the time of such loss or destruction
- 'Holder in due course'** 9 "Holder in due course" means any person who for consideration became the possessor of a promissory note, bill of exchange or cheque if payable to bearer,
- or the payee or indorsee thereof, if 2[payable to order,] before the amount mentioned in it became payable, and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title
- 'Payment in due course'** 10 "Payment in due course" means payment in accordance with the apparent tenor of the instrument in good faith and without negligence to any person in possession thereof under circumstances which do not afford a reasonable ground for believing, that he is not entitled to receive payment of the amount therein mentioned

1 Subs for "When acceptance is refused and the bill is protested for non-acceptance" by s 2 of the Negotiable Instruments Act 1885 (2 of 1885)

2 Subs for "payable to or to the order of a payee" by s 2 of the Negotiable Instruments (Amendment) Act 1919 (8 of 1919)

(Chapter II.—Of Notes, Bills and Cheques.)

11. A promissory note, bill of exchange or cheque drawn or made in British India, and made payable in, or drawn upon any person resident in, British India shall be deemed to be an inland instrument. Inland instrument

12. Any such instrument not so drawn, made or made payable shall be deemed to be a foreign instrument. Foreign instrument

13. ¹[(1) A "negotiable instrument" means a promissory note, bill of exchange or cheque payable either to order or to bearer "Negotiable instrument"

Explanation (i)—A promissory note, bill of exchange or cheque is payable to order which is expressed to be so payable or which is expressed to be payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it shall not be transferable.

Explanation (ii)—A promissory note, bill of exchange or cheque is payable to bearer which is expressed to be so payable or on which the only or last indorsement is an indorsement in blank.

Explanation (iii)—Where a promissory note bill of exchange or cheque, either originally or by indorsement, is expressed to be payable to the order of a specified person, and not to him or his order, it is nevertheless payable to him or his order at his option]

²[(2) A negotiable instrument may be made payable to two or more payees jointly or it may be made payable in the alternative to one of two, or one or some of several payees.]

14. When a promissory note, bill of exchange or cheque is transferred to any person, so as to constitute that person the holder thereof, the instrument is said to be negotiated. Negotiation

15. When the maker or holder of a negotiable instrument signs the same, otherwise than as such maker, for the purpose of negotiation, on the back or face thereof or on a slip of paper annexed thereto, or so signs for the same purpose a stamped paper intended to be completed as a negotiable instrument, he is said to indorse the same, and is called the "indorser" Indorsement

16. ³[(1) If the indorser signs his name only, the indorsement is said to be "in blank," and if he adds a direction to pay the amount mentioned in the instrument to, or to the order of, a specified person, the indorsement is said to be "in full," and the person so specified is called the "indorsee" of the instrument. Indorsement "in blank" and "in full" "Indorsee"

¹ Subs by s 3 of the Negotiable Instruments (Amendment) Act, 1919 (8 of 1919), for original sub section

² Ins by s 2 of the Negotiable Instruments (Amendment) Act, 1914 (5 of 1914)

³ Ins by s 3, *ibid*

(Chapter II —Of Notes, Bills and Cheques)

1[(2) The provisions of this Act relating to a payee shall apply with the necessary modifications to an indorsee]

Am-
biguous
instruments

17 Where an instrument may be construed either as a promissory note or bill of exchange, the holder may at his election treat it as either, and the instrument shall be thenceforward treated accordingly

Where
amount is
stated
differently
in figures
and words

18 If the amount undertaken or ordered to be paid is stated differently in figures and in words the amount stated in words shall be the amount undertaken or ordered to be paid

Instruments
payable on
demand

19 A promissory note or bill of exchange in which no time for payment is specified and a cheque are payable on demand

Inchoate
stamped
instru-
ments

20 Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments then in force in British India, and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives *prima facie* authority to the holder thereof to make or complete as the case may be upon it a negotiable instrument for any amount specified therein and not exceeding the amount covered by the stamp. The person so signing shall be liable upon such instrument in the capacity in which he signed the same to any holder in due course* for such amount provided that no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid thereunder

At sight
On pre-
sentment
After
sight

21 In a promissory note or bill of exchange the expressions at sight and on presentment mean on demand. The expression after sight means, in a promissory note after presentment for sight and in a bill of exchange after acceptance or noting for non-acceptance or protest for non-acceptance

Matur-
ty

22 The maturity of a promissory note or bill of exchange is the date at which it falls due

Days of
grace

Every promissory note or bill of exchange which is not expressed to be payable on demand at sight or on presentment is at maturity on the third day after the day on which it is expressed to be payable

Calculat-
ing
nat-
ivity of
bill or note
pa-
able
so many
months
after date
or sight

23 In calculating the date at which a promissory note or bill of exchange, made payable a stated number of months after date or after sight or after a certain event is at maturity the period stated shall be held to terminate on the day of the month which corresponds with the day on which the instrument is dated or presented for acceptance

(Chapter II.—Of Notes, Bills and Cheques Chapter III.—Parties to Notes, Bills and Cheques)

or sight, or noted for non-acceptance, or protested for non acceptance, or the event happens, or, where the instrument is a bill of exchange made payable a stated number of months after sight and has been accepted for honour, with the day on which it was so accepted. If the month in which the period would terminate has no corresponding day, the period shall be held to terminate on the last day of such month.

Illustrations

(a) A negotiable instrument dated 29th January 1878 is made payable at one month after date. The instrument is at maturity on the third day after the 28th February 1878.

(b) A negotiable instrument dated 30th August 1878, is made payable three months after date. The instrument is at maturity on the 3rd December 1878.

(c) A promissory note or bill of exchange dated 31st August 1878 is made payable three months after date. The instrument is at maturity on the 3rd December 1878.

24. In calculating the date at which a promissory note or bill of exchange made payable a certain number of days after date or after sight or after a certain event is at maturity the day of the date, or of presentment for acceptance or sight or of protest for non acceptance, or on which the event happens shall be excluded.

Calculating maturity of bill or note payable so many days after date or sight

25. When the day on which a promissory note or bill of exchange is at maturity is a public holiday, the instrument shall be deemed to be due on the next preceding business day.

When day of maturity is a holiday

Explanation—The expression "public holiday" includes Sundays New Year's day, Christmas day if either of such days falls on a Sunday, the next following Monday Good Friday and any other day declared by the ¹[Central Government] by notification in the Official Gazette, to be a public holiday

CHAPTER III

PARTIES TO NOTES, BILLS AND CHEQUES

26. Every person capable of contracting according to the law to which he is subject may bind himself and be bound by the making drawing, acceptance indorsement delivery and negotiation of a promissory note bill of exchange or cheque.

Capacity to make etc. promissory notes etc

A minor may draw indorse deliver and negotiate such instrument so as to bind all parties except himself

Minor

¹ Subs. by the A. O. for L. G.

(Chapter III — Parties to Notes, Bills and Cheques)

Nothing herein contained shall be deemed to empower a corporation to make, indorse or accept such instruments except in cases in which, under the law for the time being in force, they are so empowered.

Agency

27 Every person capable of binding himself or of being bound as mentioned in section 26 may so bind himself or be bound by a duly authorized agent acting in his name.

A general authority to transact business and to receive and discharge debts does not confer upon an agent the power of accepting or indorsing bills of exchange so as to bind his principal.

An authority to draw bills of exchange does not of itself import an authority to indorse.

Liability of agent

28 An agent who signs his name to a promissory note, bill of exchange or cheque without indicating thereon that he signs as agent or that he does not intend thereby to incur personal responsibility is liable personally on the instrument except to those who induced him to sign upon the belief that the principal only would be held liable.

Liability of legal representative

29 A legal representative of a deceased person who signs his name to a promissory note, bill of exchange or cheque is liable personally thereon unless he expressly limits his liability to the extent of the assets received by him as such.

Liability of drawer

30 The drawer of a bill of exchange or cheque is bound in case of dishonour by the drawee or acceptor thereof to compensate the holder provided due notice of dishonour has been given to or received by, the drawer as hereinafter provided.

Liability of drawer of cheque

31 The drawee of a cheque having sufficient funds of the drawer in his hands properly applicable to the payment of such cheque must pay the cheque when duly required so to do, and in default of such payment must compensate the drawer for any loss or damage caused by such default.

Liability of maker of note and acceptor of bill

32 In the absence of a contract to the contrary the maker of a promissory note and the acceptor before maturity of a bill of exchange are bound to pay the amount thereof at maturity according to the apparent tenor of the note or acceptance respectively and the acceptor of a bill of exchange at or after maturity is bound to pay the amount thereof to the holder on demand.

In default of such payment aforesaid such maker or acceptor is bound to compensate in part to the note or bill for any loss or damage sustained by him and caused by such default.

(Chapter III.—Parties to Notes, Bills and Cheques)

33. No person except the drawee of a bill of exchange, or all or some of several drawees, or a person named therein as a drawee in case of need, or an acceptor for honour, can bind himself by an acceptance.

Only drawee can be acceptor except in need or for honour

34. Where there are several drawees of a bill of exchange who are not partners, each of them can accept it for himself, but none of them can accept it for another without his authority

Acceptance by several drawees not partners

35. In the absence of a contract to the contrary, whoever indorses and delivers a negotiable instrument before maturity, without in such indorsement expressly excluding or making conditional his own liability, is bound thereby to every subsequent holder in case of dishonour by the drawee, acceptor or maker to compensate such holder for any loss or damage caused to him by such dishonour, provided due notice of dishonour has been given to, or received by, such indorser as hereinafter provided

Liability of indorser

Every indorser after dishonour is liable as upon an instrument payable on demand

36. Every prior party to a negotiable instrument is liable thereon to a holder in due course until the instrument is duly satisfied

Liability of prior parties to holder in due course

37. The maker of a promissory note or cheque, the drawer of a bill of exchange until acceptance, and the acceptor are, in the absence of a contract to the contrary, respectively liable thereon as principal debtors, and the other parties thereto are liable thereon as sureties for the maker, drawer or acceptor, as the case may be

Maker, drawer and acceptor principals

38. As between the parties so liable as sureties, each prior party is, in the absence of a contract to the contrary, also liable thereon as a principal debtor in respect of each subsequent party

Prior party a principal in respect of each subsequent party

Illustration

A draws a bill payable to his own order on B who accepts. A afterwards indorses the bill to C, C to D and D to E. As between E and B, B is the principal debtor, and A, C and D are his sureties. As between E and A, A is the principal debtor, and C and D are his sureties. As between E and C, C is the principal debtor and D is his surety.

39. When the holder of an accepted bill of exchange enters into any contract with the acceptor which, under section 134 or 135 of the Indian Contract Act, 1872, would discharge the other parties, the holder may expressly reserve his right to charge the other parties, and in such case they are not discharged.

Suretyship

(Chapter III —Parties to Notes, Bills and Cheques)

Discharge
of indorser's
liability

40 When the holder of a negotiable instrument without the consent of the indorser, destroys or impairs the indorser's remedy against a prior party, the indorser is discharged from liability to the holder to the same extent as if the instrument had been paid at maturity

Illustration

A is the holder of a bill of exchange made payable to the order of B which contains the following indorsements in blank —

First indorsement B

Second indorsement Peter Williams

Third indorsement Wright & Co

Fourth indorsement John Rozario

This bill A puts in suit against John Rozario and strikes out without John Rozario's consent the indorsements by Peter Williams and Wright & Co A is not entitled to recover anything from John Rozario

Acceptor
bound al-
though in
indorsement
forged

41. An acceptor of a bill of exchange already indorsed is not relieved from liability by reason that such indorsement is forged if he knew or had reason to believe the indorsement to be forged when he accepted the bill

Acceptance
of bill
drawn in
fictitious
name

42 An acceptor of a bill of exchange drawn in a fictitious name and payable to the drawer's order is not, by reason that such name is fictitious, relieved from liability to any holder in due course claiming under an indorsement by the same hand as the drawer's signature and purporting to be made by the drawer

Negotiable
instrument
made etc
without
considera-
tion

43 A negotiable instrument made, drawn, accepted indorsed or transferred without consideration, or for a consideration which fails, creates no obligation of payment between the parties to the transaction. But if any such party has transferred the instrument with or without indorsement to a holder for consideration, such holder, and every subsequent holder deriving title from him, may recover the amount due on such instrument from the transferor for consideration or any prior party thereto

Exception I —No party for whose accommodation a negotiable instrument has been made drawn accepted or indorsed can, if he have paid the amount thereof, recover thereon such amount from any person who became a party to such instrument for his accommodation

Exception II —No party to the instrument who has induced any other party to make, draw, accept, indorse or transfer the same to him for a consideration which he has failed to pay or perform in full shall recover thereon an amount exceeding the value of the consideration (if any) which he has actually paid or performed

(Chapter III — Parties to Notes, Bills and Cheques Chapter IV —
Of Negotiation)

44 When the consideration for which a person signed a promissory note bill of exchange or cheque consisted of money and was originally absent in part or has subsequently failed in part the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionally reduced

Partial
absence or
failure of
money
considera-
tion

Explanation — The drawer of a bill of exchange stands in immediate relation with the acceptor The maker of a promissory note bill of exchange or cheque stands in immediate relation with the payee, and the indorser with his indorsee Other signers may by agreement stand in immediate relation with a holder

Illustration

A draws a bill on B for Rs 500 payable to the order of A B accepts the bill but subsequently dishonours it by non payment A sues B on the bill B proves that it was accepted for value as to Rs 400 and as an accommodation to the plaintiff as to the residue A can only recover Rs 400

45 Where a part of the consideration for which a person signed a promissory note bill of exchange or cheque though not consisting of money is ascertainable in money without collateral enquiry and there has been a failure of that part the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionally reduced

Partial
failure of
considera-
tion not
consisting
of money

1[45A Where a bill of exchange has been lost before it is over due the person who was the holder of it may apply to the drawer to give him another bill of the same tenor giving security to the drawer if required, to indemnify him against all persons whatever in case the bill alleged to have been lost shall be found again

Holder's
right to
duplicate of
lost bill

If the drawer on request as aforesaid refuses to give such duplicate bill he may be compelled to do so]

CHAPTER IV

OF NEGOTIATION

46 The making acceptance or indorsement of a promissory note bill of exchange or cheque is completed by delivery actual or constructive

Delivery

As between parties standing in immediate relation delivery to be effectual must be made by the party making accepting or indorsing the instrument or by a person authorized by him in that behalf

(Chapter IV —Of Negotiation)

As between such parties and any holder of the instrument other than a holder in due course, it may be shown that the instrument was delivered conditionally or for a special purpose only, and not for the purpose of transferring absolutely the property therein

A promissory note, bill of exchange or cheque payable to bearer is negotiable by the delivery thereof

A promissory note, bill of exchange or cheque payable to order is negotiable by the holder by indorsement and delivery thereof

Negotiation
by delivery

47. Subject to the provisions of section 58, a promissory note, bill of exchange or cheque payable to bearer is negotiable by delivery thereof.

Exception—A promissory note, bill of exchange or cheque delivered on condition that it is not to take effect except in a certain event is not negotiable (except in the hands of a holder for value without notice of the condition) unless such event happens

Illustrations

(a) A, the holder of a negotiable instrument payable to bearer, delivers it to B as agent to keep for B. The instrument has been negotiated.

(b) A, the holder of a negotiable instrument payable to bearer, which is in the hands of A's banker, who is at the time the banker of B, directs the banker to transfer the instrument to B's credit in the banker's account with B. The banker does so and accordingly now possesses the instrument as B's agent. The instrument has been negotiated and B has become the holder of it.

Negotiation
by indorse-
ment

48. Subject to the provisions of section 58, a promissory note, bill of exchange or cheque ¹[payable to order] is negotiable by the holder by indorsement and delivery thereof

Conversion
of indorse-
ment in
blank into
indorsement
in full

49. The holder of a negotiable instrument indorsed in blank may, without signing his own name, by writing above the indorser's signature a direction to pay to any other person as indorsee, convert the indorsement in blank into an indorsement in full, and the holder does not thereby incur the responsibility of an indorser.

Effect of
indorsement

50. The indorsement of a negotiable instrument followed by delivery transfers to the indorsee the property therein with the right of further negotiation, but the indorsement may, by express words, restrict or exclude such right, or may merely constitute the indorsee an agent to indorse the instrument or to receive its contents for the indorser, or for some other specified person.

¹ Subs. for payable to the order of a specified person or to a specified person or order. By s. 4 of the Negotiable Instruments (Amendment) Act, 1919 (8 of 1919).

(Chapter IV —Of Negotiation)

Illustrations

B signs the following indorsements on different negotiable instruments payable to bearer —

- (a) 'Pay the contents to C only'
- (b) 'Pay C for my use'
- (c) 'Pay C or order for the account of B'
- (d) 'The within must be credited to C'

These indorsements exclude the right of further negotiation by C

- (e) 'Pay C'
- (f) 'Pay C value in account with the Oriental Bank'
- (g) 'Pay the contents to C, being part of the consideration in a certain deed of assignment executed by C to the indorser and others'

These indorsements do not exclude the right of further negotiation by C

51. Every sole maker, drawer, payee or indorsee, or all of several joint makers, drawers, payees or indorsees, of a negotiable instrument may, if the negotiability of such instrument has not been restricted or excluded as mentioned in section 50, indorse and negotiate the same. Who may negotiate

Explanation—Nothing in this section enables a maker or drawer to indorse or negotiate an instrument, unless he is in lawful possession or is holder thereof; or enables a payee or indorsee to indorse or negotiate an instrument, unless he is holder thereof.

Illustrations

A bill is drawn payable to A or order. A indorses it to B the indorsement not containing the words 'or order' or any equivalent words. B may negotiate the instrument.

52. The indorser of a negotiable instrument may, by express words in the indorsement, exclude his own liability thereon, or make such liability or the right of the indorsee to receive the amount due thereon depend upon the happening of a specified event, although such event may never happen. Indorser who excludes his own liability or makes it conditional

Where an indorser so excludes his liability and afterwards becomes the holder of the instrument, all intermediate indorsers are liable to him.

Illustrations

- (a) The indorser of a negotiable instrument signs his name adding the words—
'Without recourse'

Upon this indorsement he incurs no liability

(b) A is the payee and holder of a negotiable instrument. Excluding personal liability by an indorsement 'without recourse,' he transfers the instrument to B and B indorses it to C who indorses it to A. A is not only reinstated in his former rights, but has the rights of an indorsee against B and C.

(Chapter II —Of Negotiation)

Holder
deriving
title from
holder in
due course

53 A holder of a negotiable instrument who derives title from a holder in due course has the rights thereon of that holder in due course

Instrum nt
indorsed
in blank

54 Subject to the provisions hereinafter contained as to crossed cheques, a negotiable instrument indorsed in blank is payable to the bearer thereof even although originally payable to order

Conversion
of indorse-
ment in
blank into
indorsement
in full

55 If a negotiable instrument, after having been indorsed in blank, is indorsed in full, the amount of it cannot be claimed from the indorser in full except by the person to whom it has been indorsed in full, or by one who derives title through such person

Indorsement
for part of
sum due

56 No writing on a negotiable instrument is valid for the purpose of negotiation if such writing purports to transfer only a part of the amount appearing to be due on the instrument, but, where such amount has been partly paid, a note to that effect may be indorsed on the instrument, which may then be negotiated for the balance

Legal re-
presentative
cannot by
delivery
only
negotiate
instrument
indorsed by
deceased
Instrument
obtained by
unlawful
means or
for unla-
wful con-
sideration

57 The legal representative of a deceased person cannot negotiate by delivery only a promissory note bill of exchange or cheque payable to order and indorsed by the deceased but not delivered

58 When a negotiable instrument has been lost or has been obtained from any maker, acceptor or holder thereof by means of an offence or fraud, or for an unlawful consideration no possessor or indorsee who claims through the person who found or so obtained the instrument is entitled to receive the amount due thereon from such maker, acceptor or holder, or from any party prior to such holder, unless such possessor or indorsee is, or some person through whom he claims was, a holder thereof in due course

Instrument
acquired
after dis-
honour or
when
overdue

59 The holder of a negotiable instrument who has acquired it after dishonour, whether by non acceptance or non payment, with notice thereof, or after maturity, has only, as against the other parties the rights thereon of his transferor

Accommoda-
tion note
or bill

Provided that any person who, in good faith and for consideration becomes the holder, after maturity of a promissory note or bill of exchange made drawn or accepted without consideration for the purpose of enabling some party thereto to raise money thereon may recover the amount of the note or bill from any prior party

(Chapter IV—Of Negotiation Chapter V—Of Presentment)

Illustration

The acceptor of a bill of exchange when he accepted it deposited with the drawer certain goods as a collateral security for the payment of the bill with power to the drawer to sell the goods and apply the proceeds in discharge of the bill if it were not paid at maturity. The bill not having been paid at maturity the drawer sold the goods and retained the proceeds but indorsed the bill to A. A's title is subject to the same objection as the drawer's title.

60 A negotiable instrument may be negotiated (except by the maker drawee or acceptor after maturity) until payment or satisfaction thereof by the maker drawee or acceptor at or after maturity but not after such payment or satisfaction.

Instrument negotiable till payment or satisfaction

CHAPTER V

OF PRESENTMENT

61 A bill of exchange payable after sight must if no time or place is specified therein for presentment be presented to the drawee thereof for acceptance if he can after reasonable search be found by a person entitled to demand acceptance within a reasonable time after it is drawn and in business hours on a business day. In default of such presentment no party thereto is liable thereon to the person making such default.

Presentment for acceptance

If the drawee cannot after reasonable search be found the bill is dishonoured.

If the bill is directed to the drawee at a particular place it must be presented at that place and if at the due date for presentment he cannot after reasonable search be found there the bill is dishonoured.

[Where authorized by agreement or usage a presentment through the post office by means of a registered letter is sufficient.]

62 A promissory note payable at a certain period after sight must be presented to the maker thereof for sight (if he can after reasonable search be found) by a person entitled to demand payment within a reasonable time after it is made and in business hours on a business day. In default of such presentment no party thereto is liable thereon to the person making such default.

Presentment of promissory note for sight

63 The holder must if so required by the drawee of a bill of exchange presented to him for acceptance allow the drawee 2[forty eight] hours (exclusive of public holidays) to consider whether he will accept it.

Drawee's time for deliberation

1 Ins. by s. 4 of the Negotiable Instruments Act 1885 (2 of 1885)

2 Subs. for twenty-four by s. 2 of the Negotiable Instruments (Amendment) Act 1921 (12 of 1921)

(Chapter IV —Of Negotiation)

Holder
deriving
title from
holder in
due course

53 A holder of a negotiable instrument who derives title from a holder in due course has the rights thereon of that holder in due course

Instrument
indorsed
in blank

54 Subject to the provisions hereinafter contained as to crossed cheques, a negotiable instrument indorsed in blank is payable to the bearer thereof even although originally payable to order

Conversion
of indorse-
ment in
blank into
indorsement
in full

55 If a negotiable instrument, after having been indorsed in blank, is indorsed in full, the amount of it cannot be claimed from the indorser in full, except by the person to whom it has been indorsed in full, or by one who derives title through such person

Indorsement
for part of
sum due

56 No writing on a negotiable instrument is valid for the purpose of negotiation if such writing purports to transfer only a part of the amount appearing to be due on the instrument, but, where such amount has been partly paid, a note to that effect may be indorsed on the instrument, which may then be negotiated for the balance

Legal re-
presentative
cannot by
delivery
only
negotiate
instrument
indorsed by
deceased
Instrument
obtained by
unlawful
means or
for unlaw-
ful con-
sideration

57. The legal representative of a deceased person cannot negotiate by delivery only a promissory note, bill of exchange or cheque payable to order and indorsed by the deceased but not delivered

58 When a negotiable instrument has been lost, or has been obtained from any maker, acceptor or holder thereof by means of an offence or fraud, or for an unlawful consideration, no possessor or indorsee who claims through the person who found or so obtained the instrument is entitled to receive the amount due thereon from such maker, acceptor or holder, or from any party prior to such holder, unless such possessor or indorsee is, or some person through whom he claims was, a holder thereof in due course

Instrument
acquired
after dis-
honour or
when
overdue
Accommoda-
tion note
or bill

59 The holder of a negotiable instrument, who has acquired it after dishonour, whether by non acceptance or non payment, with notice thereof, or after maturity, has only, as against the other parties, the rights thereon of his transferor

Provided that any person who, in good faith and for consideration, becomes the holder, after maturity, of a promissory note or bill of exchange made, drawn or accepted without consideration for the purpose of enabling some party thereto to raise money thereon, may recover the amount of the note or bill from any prior party

(Chapter V.—Of Presentment)

72 ¹[Subject to the provisions of section 84,] a cheque must, in order to charge the drawer, be presented at the bank upon which it is drawn before the relation between the drawer and his banker has been altered to the prejudice of the drawer

Presentment of cheque to charge drawer

73 A cheque must in order to charge any person except the drawer, be presented within a reasonable time after delivery thereof by such person

Presentment of cheque to charge any other person.

74 Subject to the provisions of section 31, a negotiable instrument payable on demand must be presented for payment within a reasonable time after it is received by the holder

Presentment of instrument payable on demand

75 Presentment for acceptance or payment may be made to the duly authorized agent of the drawee, maker or acceptor, as the case may be, or, where the drawee, maker or acceptor has died, to his legal representative, or, where he has been declared an insolvent to his assignee

Presentment by or to agent, representative of deceased or assignee of insolvent

²[**75A.** Delay in presentment ³[for acceptance or payment] is excused if the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate presentment must be made within a reasonable time]

Excuse for delay in presentment for acceptance or payment

76 No presentment for payment is necessary and the instrument is dishonoured at the due date for presentment in any of the following cases —

When presentment unnecessary

(a) if the maker drawee or acceptor intentionally prevents the presentment of the instrument, or,

if the instrument being payable at his place of business, he closes such place on a business day during the usual business hours, or,

if the instrument being payable at some other specified place, neither he nor any person authorized to pay it attends at such place during the usual business hours, or,

if the instrument not being payable at any specified place, he cannot after due search be found,

(b) as against any party sought to be charged therewith, if he has engaged to pay notwithstanding non presentment,

¹ Ins by s 2 of the Negotiable Instruments (Amendment) Act 1897 (6 of 1897)

² Ins by s 2 of the Negotiable Instruments (Amendment) Act 1900 (25 of 1900)

³ Subs for for payment by s 3 of the Negotiable Instruments (Amendment) Act 1921 (12 of 1921)

(Chapter V—Of Presentment)

Presentment
for payment

64 Promissory notes, bills of exchange and cheques must be presented for payment to the maker, acceptor or drawee thereof respectively, by or on behalf of the holder as hereinafter provided. In default of such presentment, the other parties thereto are not liable thereon to such holder.

[Where authorized by agreement or usage, a presentment through the post office by means of a registered letter is sufficient.]

Exception—Where a promissory note is payable on demand and is not payable at a specified place, no presentment is necessary in order to charge the maker thereof.

Hours for
presentment

65 Presentment for payment must be made during the usual hours of business, and, if at a banker's, within banking hours.

Presentment
for payment
of instru-
ment pay-
able
after date
or sight

66 A promissory note or bill of exchange, made payable at a specified period after date or sight thereof, must be presented for payment at maturity.

Presentment
for payment
of prom-
issory note
payable by
instalments

67. A promissory note payable by instalments must be presented for payment on the third day after the date fixed for payment of each instalment, and non-payment on such presentment has the same effect as non-payment of a note at maturity.

Presentment
for payment
of instru-
ment pay-
able at
specified
place and
not else-
where

68 A promissory note, bill of exchange or cheque made, drawn or accepted payable at a specified place and not elsewhere must, in order to charge any party thereto, be presented for payment at that place.

Instrument
payable at
specified
place

69 A promissory note or bill of exchange made, drawn or accepted payable at a specified place must, in order to charge the maker or drawer thereof, be presented for payment at that place.

Presentment
where no
exclusive
place
specified

70 A promissory note or bill of exchange, not made payable as mentioned in sections 68 and 69, must be presented for payment at the place of business (if any), or at the usual residence, of the maker, drawee or acceptor thereof, as the case may be.

Presentment
when maker
etc. has no
known place
of business
or residence

71 If the maker, drawee or acceptor of a negotiable instrument has no known place of business or fixed residence and no place is specified in the instrument for presentment for acceptance or payment, such presentment may be made to him in person wherever he can be found.

(Chapter V.—Of Presentment)

72 ¹[Subject to the provisions of section 81,] a cheque must, in order to charge the drawer, be presented at the bank upon which it is drawn before the relation between the drawer and his banker has been altered to the prejudice of the drawer

Presentment
of cheque
to charge
drawer

73 A cheque must, in order to charge any person except the drawer, be presented within a reasonable time after delivery thereof by such person

Presentment
of cheque to
charge any
other person.

74 Subject to the provisions of section 31, a negotiable instrument payable on demand must be presented for payment within a reasonable time after it is received by the holder

Presentment
of instru-
ment pay-
able on
demand

75 Presentment for acceptance or payment may be made to the duly authorized agent of the drawee, maker or acceptor, as the case may be, or, where the drawee, maker or acceptor has died, to his legal representative, or, where he has been declared an insolvent, to his assignee

Presentment
by or to
agent, re-
presentative
of deceased
or assignee
of insolvent

²[75A. Delay in presentment ³[for acceptance or payment] is excused if the delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate presentment must be made within a reasonable time.]

Excuse for
delay in
presentment
for accept-
ance or pay-
ment

76 No presentment for payment is necessary, and the instrument is dishonoured at the due date for presentment in any of the following cases —

When pre-
sentment
unnecessary

(a) if the maker drawee or acceptor intentionally prevents the presentment of the instrument, or,

if the instrument being payable at his place of business, he closes such place on a business day during the usual business hours, or,

if the instrument being payable at some other specified place, neither he nor any person authorized to pay it attends at such place during the usual business hours, or

if the instrument not being payable at any specified place, he cannot after due search be found

(b) as against any party sought to be charged therewith if he has engaged to pay notwithstanding non presentment

¹ Ins by s 2 of the Negotiable Instruments (Amendment) Act 1897 (6 of 1897)

² Ins by s 2 of the Negotiable Instruments (Amendment) Act 1970 (25 of 1970)

³ Subs for for payment by s 3 of the Negotiable Instruments (Amendment) Act 1971 (12 of 1971)

(Chapter V —Of Presentment)

Presentment
for payment

64 Promissory notes, bills of exchange and cheques must be presented for payment to the maker, acceptor or drawee thereof respectively, by or on behalf of the holder as hereinafter provided. In default of such presentment, the other parties thereto are not liable thereon to such holder.

¹[Where authorized by agreement or usage, a presentment through the post office by means of a registered letter is sufficient.]

Exception —Where a promissory note is payable on demand and is not payable at a specified place, no presentment is necessary in order to charge the maker thereof.

Hours for
presentment

65 Presentment for payment must be made during the usual hours of business, and, if at a banker's within banking hours.

Presentment
for payment
of instru-
ment pay-
able
after date
or sight

66 A promissory note or bill of exchange, made payable at a specified period after date or sight thereof, must be presented for payment at maturity.

Presentment
for payment
of pro-
missory note
payable by
instalments

67. A promissory note payable by instalments must be presented for payment on the third day after the date fixed for payment of each instalment; and non-payment on such presentment has the same effect as non-payment of a note at maturity.

Presentment
for payment
of instru-
ment pay-
able at
specified
place and
not else-
where

68 A promissory note, bill of exchange or cheque made, drawn or accepted payable at a specified place and not elsewhere must, in order to charge any party thereto be presented for payment at that place.

Instrument
payable at
specified
place

69 A promissory note or bill of exchange made, drawn or accepted payable at a specified place must, in order to charge the maker or drawer thereof be presented for payment at that place.

Presentment
where no
exclusive
place
specified

70 A promissory note or bill of exchange not made payable as mentioned in sections 68 and 69 must be presented for payment at the place of business (if any), or at the usual residence, of the maker, drawer or acceptor thereof, as the case may be.

Presentment
when maker
etc has no
known place
of business
or residence

71 If the maker, drawee or acceptor of a negotiable instrument has no known place of business or fixed residence and no place is specified in the instrument for presentment for acceptance or payment, such presentment may be made to him in person wherever he can be found.

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(Chapter V —Of Presentment)

Presentment
for payment

64 Promissory notes, bills of exchange and cheques must be presented for payment to the maker, acceptor or drawee thereof respectively, by or on behalf of the holder as hereinafter provided. In default of such presentment, the other parties thereto are not liable thereon to such holder.

1[Where authorized by agreement or usage, a presentment through the post office by means of a registered letter is sufficient.]

Exception —Where a promissory note is payable on demand and is not payable at a specified place, no presentment is necessary in order to charge the maker thereof.

Hours for
presentment

65 Presentment for payment must be made during the usual hours of business, and, if at a banker's, within banking hours.

Presentment
for payment
of instru-
ment pay-
able
after date
or sight

66 A promissory note or bill of exchange, made payable at a specified period after date or sight thereof, must be presented for payment at maturity.

Presentment
for payment
of pro-
missory note
payable by
instalments

67. A promissory note payable by instalments must be presented for payment on the third day after the date fixed for payment of each instalment, and non payment on such presentment has the same effect as non payment of a note at maturity.

Presentment
for payment
of instru-
ment pay-
able at
specified
place and
not else-
where

68 A promissory note, bill of exchange or cheque made, drawn or accepted payable at a specified place and not elsewhere must, in order to charge any party thereto be presented for payment at that place.

Instrument
payable at
specified
place

69 A promissory note or bill of exchange made drawn or accepted payable at a specified place must in order to charge the maker or drawer thereof be presented for payment at that place.

Presentment
where no
exclusive
place
specified

70 A promissory note or bill of exchange not made payable as mentioned in sections 68 and 69 must be presented for payment at the place of business (if any) or at the usual residence, of the maker, drawee or acceptor thereof, as the case may be.

Presentment
when maker
etc has no
known place
of business
or residence

71 If the maker, drawee or acceptor of a negotiable instrument has no known place of business or fixed residence and no place is specified in the instrument for presentment for acceptance or payment, such presentment may be made to him in person wherever he can be found.

(Chapter VII —Of Discharge from Liability on Notes, Bills and Cheques)

Explanation — An acceptance is qualified—

- (a) where it is conditional declaring the payment to be dependent on the happening of an event therein stated,
- (b) where it undertakes the payment of part only of the sum ordered to be paid,
- (c) where no place of payment being specified on the order, it undertakes the payment at a specified place, and not otherwise or elsewhere or where a place of payment being specified in the order it undertakes the payment at some other place and not otherwise or elsewhere,
- (d) where it undertakes the payment at a time other than that at which under the order it would be legally due

87 Any material alteration of a negotiable instrument renders the same void as against any one who is a party thereto at the time of making such alteration and does not consent thereto unless it was made in order to carry out the common intention of the original parties

Effect of material alteration

and any such alteration if made by an indorsee discharges his indorser from all liability to him in respect of the consideration thereof

Alteration by indorsee

The provisions of this section are subject to those of sections 20, 49, 86 and 125

88 An acceptor or indorser of a negotiable instrument is bound by his acceptance or indorsement notwithstanding any previous alteration of the instrument

Acceptor or indorser bound notwithstanding previous alteration.

89 Where a promissory note bill of exchange or cheque has been materially altered but does not appear to have been so altered

Payment of instrument on which alteration is not

or where a cheque is presented for payment which does not at the time of presentation appear to be crossed or to have had a crossing apparent which has been obliterated,

is not apparent

payment thereof by a person or banker liable to pay and paying the same according to the apparent tenor thereof at the time of payment and otherwise in due course, shall discharge such person or banker from all liability thereon and such payment shall not be questioned by reason of the instrument having been altered or the cheque crossed

*(Chapter VII —Of Discharge from Liability on Notes, Bills and
Cheques Chapter VIII —Of Notice of Dishonour)*

Extinguish-
ment of
rights of
action on
bill in
acceptor's
hands.

90 If a bill of exchange which has been negotiated is, at or after maturity, held by the acceptor in his own right, all rights of action thereon are extinguished

CHAPTER VIII

OF NOTICE OF DISHONOUR

Dishonour
by non-ac-
ceptance

91 A bill of exchange is said to be dishonoured by non acceptance when the drawee, or one of several drawees not being partners makes default in acceptance upon being duly required to accept the bill, or where presentment is excused and the bill is not accepted

Where the drawee is incompetent to contract, or the acceptance is qualified the bill may be treated as dishonoured

Dishonour
by non
payment.

92 A promissory note, bill of exchange or cheque is said to be dishonoured by non payment when the maker of the note, acceptor of the bill or drawee of the cheque makes default in payment upon being duly required to pay the same

By and to
whom
notice
should be
given

93 When a promissory note, bill of exchange or cheque is dishonoured by non acceptance or non payment, the holder thereof, or some party thereto who remains liable thereon, must give notice that the instrument has been so dishonoured to all other parties whom the holder seeks to make severally liable thereon, and to some one of several parties whom he seeks to make jointly liable thereon

Nothing in this section renders it necessary to give notice to the maker of the dishonoured promissory note or the drawee or acceptor of the dishonoured bill of exchange or cheque

Made in
which
notice may
be given.

94 Notice of dishonour may be given to a duly authorized agent of the person to whom it is required to be given, or, where he has died, to his legal representative or, where he has been declared an insolvent, to his assignee, may be oral or written; may, if written, be sent by post, and may be in any form, but it must inform the party to whom it is given, either in express terms or by reasonable intendment, that the instrument has been dishonoured and in what way, and that he will be held liable thereon, and it must be given within a reasonable time after dishonour at the place of business or (in case such party has no place of business) at the residence of the party for whom it is intended

(Chapter III —Of Notice of Dishonour Chapter IV —Of Noting and Protest)

If the notice is duly directed and sent by post and miscarries such miscarriage does not render the notice invalid

95 Any party receiving notice of dishonour must in order to render any prior party liable to himself give notice of dishonour to such party within a reasonable time unless such party otherwise receives due notice as provided by section 93

Party receiving must transmit notice of dishonour

96 When the instrument is deposited with an agent for presentment the agent is entitled to the same time to give notice to his principal as if he were the holder giving notice of dishonour and the principal is entitled to a further like period to give notice of dishonour

Agent for presentment

97 When the party to whom notice of dishonour is despatched is dead but the party despatching the notice is ignorant of his death the notice is sufficient

When party to whom notice given is dead

98 No notice of dishonour is necessary—

When notice of dishonour is unnecessary

(a) when it is dispensed with by the party entitled thereto

(b) in order to charge the drawer when he has countermanded payment

(c) when the party charged could not suffer damage for want of notice

(d) when the party entitled to notice cannot after due search be found or the party bound to give notice is for any other reason unable without any fault of his own to give it,

(e) to charge the drawers when the acceptor is also a drawer

(f) in the case of a promissory note which is not negotiable

(g) when the party entitled to notice knowing the facts promises unconditionally to pay the amount due on the instrument

CHAPTER IV

OF NOTING AND PROTEST

99 When a promissory note or bill of exchange has been dishonoured by non acceptance or non payment the holder may cause such dishonour to be noted by a notary public upon the instrument or upon a paper attached thereto or partly upon each

Noting

Such note must be made within a reasonable time after dishonour, and must specify the date of dishonour, the reason if any, assigned for

(Chapter IX —Of Noting and Protest)

such dishonour, or, if the instrument has not been expressly dishonoured, the reason why the holder treats it as dishonoured, and the notary's charges

Protest

100 When a promissory note or bill of exchange has been dishonoured by non acceptance or non payment the holder may, within a reasonable time, cause such dishonour to be noted and certified by a notary public. Such certificate is called a protest.

Protest
for better
security

When the acceptor of a bill of exchange has become insolvent, or his credit has been publicly impeached, before the maturity of the bill, the holder may, within a reasonable time, cause a notary public to demand better security of the acceptor, and on its being refused may, within a reasonable time cause such facts to be noted and certified as aforesaid. Such certificate is called a protest for better security.

Contents
of protest

101 A protest under section 100 must contain—

- (a) either the instrument itself, or a literal transcript of the instrument and of everything written or printed thereupon,
- (b) the name of the person for whom and against whom the instrument has been protested,
- (c) a statement that payment or acceptance, or better security, as the case may be, has been demanded of such person by the notary public, the terms of his answer, if any, or a statement that he gave no answer or that he could not be found,
- (d) when the note or bill has been dishonoured, the place and time of dishonour, and, when better security has been refused, the place and time of refusal,
- (e) the subscription of the notary public making the protest,
- (f) in the event of an acceptance for honour or of a payment for honour, the name of the person by whom, of the person for whom, and the manner in which, such acceptance or payment was offered and effected.

¹[A notary public may make the demand mentioned in clause (c) of this section either in person or by his clerk or, where authorized by agreement or usage, by registered letter.]

Notice of
protest

102 When a promissory note or bill of exchange is required by law to be protested notice of such protest must be given instead of notice of dishonour, in the same manner and subject to the same conditions, but the notice may be given by the notary public who makes the protest.

¹ Ins by s 5 of the Negotiable Instruments Act 1885 (2 of 1885)

(Chapter IX.—Of Noting and Protest. Chapter X.—Of Reasonable Time)

103. All bills of exchange drawn payable at some other place than the place mentioned as the residence of the drawee, and which are dishonoured by non-acceptance, may, without further presentment to the drawee, be protested for non-payment in the place specified for payment, unless paid before or at maturity

Protest for non payment after dishonour by non acceptance

104 Foreign bills of exchange must be protested for dishonour when such protest is required by the law of the place where they are drawn

Protest of foreign bills

¹[104A. For the purposes of this Act where a bill or note is required to be protested within a specified time or before some further proceeding is taken, it is sufficient that the bill has been noted for protest before the expiration of the specified time or the taking of the proceeding, and the formal protest may be extended at any time thereafter as of the date of the noting]

When noting equivalent to protest

CHAPTER X

OF REASONABLE TIME

105 In determining what is a reasonable time for presentment for acceptance or payment, for giving notice of dishonour and for noting, regard shall be had to the nature of the instrument and the usual course of dealing with respect to similar instruments, and, in calculating such time, public holidays shall be excluded

Reasonable time

106 If the holder and the party to whom notice of dishonour is given carry on business or live (as the case may be) in different places such notice is given within a reasonable time if it is despatched by the next post or on the day next after the day of dishonour

Reasonable time of giving notice of dishonour

If the said parties carry on business or live in the same place, such notice is given within a reasonable time if it is despatched in time to reach its destination on the day next after the day of dishonour

107. A party receiving notice of dishonour, who seeks to enforce his right against a prior party, transmits the notice within a reasonable time if he transmits it within the same time after its receipt as he would have had to give notice if he had been the holder

Reasonable time for transmitting such notice

(Chapter XI—Of Acceptance and Payment for Honour and Reference in Case of Need)

CHAPTER XI

OF ACCEPTANCE AND PAYMENT FOR HONOUR AND REFERENCE IN CASE OF NEED

Acceptance
for honour

108 When a bill of exchange has been noted or protested for non-acceptance or for better security, any person not being a party already liable thereon may, with the consent of the holder, by writing on the bill, accept the same for the honour of any party thereto * * * 1

How accept-
ance for
honour
must be
made

109 A person desiring to accept for honour must 2[by writing on the bill under his hand,] declare that he accepts under protest the protested bill for the honour of the drawer or of a particular indorser whom he names, or generally for honour * * * 3

Acceptance
ing for
whose
honour it
is made
Liability of
acceptor
for honour

110 Where the acceptance does not express for whose honour it is made, it shall be deemed to be made for the honour of the drawer

111 An acceptor for honour binds himself to all parties subsequent to the party for whose honour he accepts to pay the amount of the bill if the drawee do not and such party and all prior parties are liable in their respective capacities to compensate the acceptor for honour for all loss or damage sustained by him in consequence of such acceptance

But an acceptor for honour is not liable to the holder of the bill unless it is presented, or (in case the address given by such acceptor on the bill is a place other than the place where the bill is made payable) forwarded for presentment not later than the day next after the day of its maturity

When
acceptor
for honour
may be
charged
Payment
for honour

112 An acceptor for honour cannot be charged unless the bill has at its maturity been presented to the drawee for payment, and has been dishonoured by him, and noted or protested for such dishonour

113 When a bill of exchange has been noted or protested for non-payment, any person may pay the same for the honour of any party liable to pay the same, provided that the person so paying 4[or his agent in that behalf] has previously declared before a notary public the party for whose honour he pays, and that such declaration has been recorded by such notary public

¹ The last portion of the section was rep by s 7 of the Negotiable Instruments Act 1885 (2 of 1885)

² Subs for in the presence of a notary public subscribe the bill with his own hand and by s 2, ibid

³ The words and such declaration must be recorded by the notary in his register rep by s 8, ibid

⁴ Ins by s 9, ibid

(Chapter VI —Of Acceptance and Payment for Honour and Reference
in Case of Need Chapter VII —Of Compensation)

114 Any person so paying is entitled to all the rights in respect of the bill of the holder at the time of such payment and may recover from the party for whose honour he pays all sums so paid with interest thereon and with all expenses properly incurred in making such payment.

Right of
payer for
honour

115 Where a drawee in case of need is named in a bill of exchange or in any indorsement thereon the bill is not dishonoured until it has been dishonoured by such drawee.

Drawee in
case of
need

116 A drawee in case of need may accept and pay the bill of exchange without previous protest.

Acceptance
and
payment
without
protest

CHAPTER VII

OF COMPENSATION

117 The compensation payable in case of dishonour of a promissory note bill of exchange or cheque by any party liable to the holder or any indorsee shall ¹ * * * be determined by the following rules —

Rules as
to com-
pensation

- (a) the holder is entitled to the amount due upon the instrument together with the expenses properly incurred in presenting noting and protesting it
- (b) when the person charged resides at a place different from that at which the instrument was payable the holder is entitled to receive such sum at the current rate of exchange between the two places
- (c) an indorser who being liable has paid the amount due on the same is entitled to the amount so paid with interest at six per centum per annum from the date of payment until tender or realization thereof together with all expenses caused by the dishonour and payment
- (d) when the person charged and such indorser reside at different places the indorser is entitled to receive such sum at the current rate of exchange between the two places
- (e) the party entitled to compensation may draw a bill upon the party liable to compensate him payable at sight or on demand for the amount due to him together with all expenses properly incurred by him Such bill must be accompanied by the instrument dishonoured and the protest thereof (if any) If such bill is dishonoured the party

¹ Certain words are omitted by s 3 of the Negotiable Instruments (Amendment) Act 1926 (30 of 1926)

(Chapter XII—Of Compensation Chapter XIII—Special Rules of Evidence)

dishonouring the same is liable to make compensation thereof in the same manner as in the case of the original bill

CHAPTER XIII

SPECIAL RULES OF EVIDENCE

118 Until the contrary is proved, the following presumptions shall be made

Presump-
tions as to
negotiable
instru-
ments—
of con-
sideration

(a) that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration,

as to date

(b) that every negotiable instrument bearing a date was made or drawn on such date,

as to time of
acceptance

(c) that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity,

as to time of
transfer

(d) that every transfer of a negotiable instrument was made before its maturity,

as to order
of indorse-
ment,

(e) that the indorsements appearing upon a negotiable instrument were made in the order in which they appear thereon,

as to stamp,

(f) that a lost promissory note, bill of exchange or cheque was duly stamped,

that holder
is a holder
in due
course

(g) that the holder of a negotiable instrument is a holder in due course provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burthen of proving that the holder is a holder in due course lies upon him

Presumption
on proof of
protest

119 In a suit upon an instrument which has been dishonoured, the Court shall on proof of the protest, presume the fact of dishonour, unless and until such fact is disproved

(Chapter XIII.—Special Rules of Evidence Chapter XIV—Of
Crossed Cheques.)

120 No maker of a promissory note, and no drawer of a bill of exchange or cheque, and no acceptor of a bill of exchange for the honour of the drawer, shall, in a suit thereon by a holder in due course, be permitted to deny the validity of the instrument as originally made or drawn.

Estoppel
against
denying
original
validity of
instrument

121. No maker of a promissory note and no acceptor of a bill of exchange ¹[payable to order] shall, in a suit thereon by a holder in due course, be permitted to deny the payee's capacity, at the date of the note or bill, to indorse the same

Estoppel
against
denying
capacity of
payee to
indorse

122 No indorser of a negotiable instrument shall, in a suit thereon by a subsequent holder, be permitted to deny the signature or capacity to contract of any prior party to the instrument

Estoppel
against
denying
signature or
capacity of
prior party

CHAPTER XIV

OF CROSSED CHEQUES

123 Where a cheque bears across its face an addition of the words "and company" or any abbreviation thereof, between two parallel transverse lines, or of two parallel transverse lines simply, either with or without the words "not negotiable", that addition shall be deemed a crossing and the cheque shall be deemed to be crossed generally.

Cheque
crossed
generally

124. Where a cheque bears across its face an addition of the name of a banker, either with or without the words "not negotiable", that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed specially, and to be crossed to that banker

Cheque
crossed
specially

125 Where a cheque is uncrossed, the holder may cross it generally or specially

Crossing
after issue

Where a cheque is crossed generally, the holder may cross it specially.

Where a cheque is crossed generally or specially, the holder may add the words "not negotiable"

Where a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker, his agent, for collection

126 Where a cheque is crossed generally, the banker on whom it is drawn shall not pay it otherwise than to a banker

Payment of
cheque
crossed
generally

¹ Subs. for "payable to, or to the order of, a specified person" by s. 5 of the Negotiable Instruments (Amendment) Act, 1919 (8 of 1919)

(Chapter XIV—Of Crossed Cheques. Chapter XV.—Of Bills in Sets)

Payment of
cheque
crossed
specially

Where a cheque is crossed specially, the banker on whom it is drawn shall not pay it otherwise than to the banker to whom it is crossed, or his agent for collection

Payment of
cheque
crossed
specially
more than
once

127 Where a cheque is crossed specially to more than one banker, except when crossed to an agent for the purpose of collection, the banker on whom it is drawn shall refuse payment thereof.

Payment in
due course
of crossed
cheque

128 Where the banker on whom a crossed cheque is drawn has paid the same in due course, the banker paying the cheque, and (in case such cheque has come to the hands of the payee) the drawer thereof, shall respectively be entitled to the same rights, and be placed in the same position in all respects, as they would respectively be entitled to and placed in if the amount of the cheque had been paid to and received by the true owner thereof

Payment of
crossed
cheque
out of
due course

129 Any banker paying a cheque crossed generally otherwise than to a banker, or a cheque crossed specially otherwise than to the banker to whom the same is crossed, or his agent for collection, being a banker, shall be liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid

Cheque bear-
ing not
negotiable "

130 A person taking a cheque crossed generally or specially, bearing in either case the words "not negotiable," shall not have, and shall not be capable of giving, a better title to the cheque than that which the person from whom he took it had

Non liability
of banker
receiving
payment of
cheque

131 A banker who has in good faith and without negligence received payment for a customer of a cheque crossed generally or specially to himself shall not, in case the title to the cheque proves defective, incur any liability to the true owner of the cheque by reason only of having received such payment

¹[*Explanation*—A banker receives payment of a crossed cheque for a customer within the meaning of this section notwithstanding that he credits his customer's account with the amount of the cheque before receiving payment thereof]

CHAPTER XV

OF BILLS IN SETS

Set of bills

132 Bills of exchange may be drawn in parts, each part being numbered and containing a provision that it shall continue payable only

¹ Ins by s 2 of the Negotiable Instruments (Amendment) Act, 1922 (18 of 1922)

(Chapter XV—Of Bills in Sets Chapter XVI—Of International Law)

so long as the others remain unpaid All the parts together make a set, but the whole set constitutes only one bill, and is extinguished when one of the parts, if a separate bill would be extinguished

Exception—When a person accepts or indorses different parts of the bill in favour of different persons, he and the subsequent indorsers of each part are liable on such part as if it were a separate bill

133 As between holders in due course of different parts of the same set he who first acquired title to his part is entitled to the other parts and the money represented by the bill

Holder of first acquired part entitled to all

CHAPTER XVI

OF INTERNATIONAL LAW

134 In the absence of a contract to the contrary, the liability of the maker or drawer of a foreign promissory note, bill of exchange or cheque is regulated in all essential matters by the law of the place where he made the instrument and the respective liabilities of the acceptor and indorser by the law of the place where the instrument is made payable

Law governing liability of maker, acceptor or indorser of foreign instrument

Illustration

A bill of exchange was drawn by A in California where the rate of interest is 25 per cent, and accepted by B payable in Washington where the rate of interest is 6 per cent The bill is indorsed in British India and is dishonoured An action on the bill is brought against B in British India He is liable to pay interest at the rate of 6 per cent only, but if A is charged as drawer, A is liable to pay interest at the rate of 25 per cent

135 Where a promissory note bill of exchange or cheque is made payable in a different place from that in which it is made or indorsed, the law of the place where it is made payable determines what constitutes dishonour and what notice of dishonour is sufficient

Law of place of payment governs dishonour

Illustration

A bill of exchange drawn and indorsed in British India but accepted payable in France is dishonoured The indorsee causes it to be protested for such dishonour and gives notice thereof in accordance with the law of France though not in accordance with the rules herein contained in respect of bills which are not foreign The notice is sufficient

136 If a negotiable instrument is made, drawn, accepted or indorsed out of British India, but in accordance with the law of British India the circumstance that any agreement evidenced by such instrument is invalid according to the law of the country wherein it was entered into does not invalidate any subsequent acceptance or indorsement made thereon in British India

Instrument made etc, out of British India but in accordance with its law

(Chapter XVI—Of International Law Chapter XVII—Notaries Public Schedule)

Presumption
as to foreign
law

137 The law of any foreign country regarding promissory notes, bills of exchange and cheques shall be presumed to be the same as that of British India, unless and until the contrary is proved

CHAPTER XVII

NOTARIES PUBLIC

Power to
appoint
notaries
public

138 The ²[Central Government] may, from time to time, by notification in the Official Gazette, appoint³ any person, by name or by virtue of his office, to be a notary public under this Act and to exercise his functions as such within any local area, and may, by like notification, remove from office any notary public appointed under this Act

Power to
make rules
for notaries
public.

139 ⁴The ²[Central Government] may, from time to time, by notification in the Official Gazette, make rules consistent with this Act for the guidance and control of notaries public appointed under this Act, and may, by such rules (among other matters), fix the fees payable to such notaries

SCHEDULE—[Enactments repealed] Rep by the Amending Act, 1891 (XII of 1891)

¹ Ch XVII was added by the Negotiable Instruments Act 1885 (2 of 1885) s 10

² Subs by the A O for L G which was subs for G G in C by the Decentralization Act 1914 (4 of 1914) s 2 and Sch, Part I

³ For appointment of notaries public within districts and sub districts of the Madras Presidency see Mad R and O in Bombay see Bom R and O

⁴ For rules under this section see Notification No 1433 dated 30th September 1886 Gazette of India 1886 Pt I, p 548 and Gen R & O, Vol II p 279

INDEX

	PAGE
Agriculturists' Relief— <i>see</i> Dekkhan Agriculturists' Relief Act, 1879	540
Arms— <i>see</i> Indian Arms Act, 1878	501
Banki Laws Act 1881	641
Bhannagar Act, 1876	349
Bombay Municipal Debentures Act, 1876	326
Bombay Revenue Jurisdiction Act, 1876	318
Broach and Kaira Incumbered Estates Act, 1877	388
Broach and Kaira Incumbered Estates Act 1881	627
Canal— <i>see</i> Northern India Canal and Drainage Act, 1873	207
Central Provinces Laws Act 1875	291
Chota Nagpur Incumbered Estates Act, 1876	296
Civil Courts— <i>see</i> Madras Civil Courts Act, 1873	193
Coinage— <i>see</i> Native Coinage Act 1876	315
Contract— <i>see</i> Indian Contract Act, 1872	91
Customs— <i>see</i> Sea Customs Act 1878	405
Debentures— <i>see</i> Bombay Municipal Debentures Act, 1876	326
Dekkhan Agriculturists' Relief Act, 1879	540
Drainage— <i>see</i> Northern India Canal and Drainage Act, 1873	207
Dramatic Performances Act, 1876	346
Elephants Preservation Act 1879	532
Endowment— <i>see</i> Husainabad Endowment	515
Estates— <i>see</i> Chota Nagpur Incumbered Estates Act, 1876	296
<i>see</i> Broach and Kaira Incumbered Estates Act 1877	388
<i>see</i> Broach and Kaira Incumbered Estates Act, 1881	627
European Vagrancy Act 1874	252
Evidence— <i>see</i> Indian Evidence Act, 1872	1
Fairways— <i>see</i> Obstructions in Fairways Act 1881	624
Ferries— <i>see</i> Northern India Ferries Act, 1878	521
Foreign Recruiting Act 1874	250
Fort William Act, 1881	620
Government Savings Banks Act 1873	203
Hackney carriage Act 1879	534
Husainabad Endowment	515
Indian Arms Act, 1878	501
Indian Christian Marriage Act 1872	155
Indian Contract Act, 1872	91
Indian Evidence Act, 1872	1
Indian Law Reports Act, 1875	290
Indian Majority Act, 1875	288
Indian Oaths Act, 1873	237
Indian Treasure trove Act, 1878	398
Kazis Act, 1880	603
Law Reports— <i>see</i> Indian Law Reports Act, 1875	290
Laws Local Extent Act, 1874	263
Legal Practitioners Act, 1879	578

	PAGE
Madras Civil Courts Act 1873	193
Magistrates—see Presidency Magistrates (Court fees) Act 1877	397
Majority—see Indian Majority Act 1875	288
Marriage—see Special Marriage Act 1872	63
see Indian Christian Marriage Act 1872	155
Marr ed Women s Property Act 1874	246
Municipal Taxation Act 1881	617
Murderous Outrages—see Punjab Murderous Outrages (Amendment) Act 1877	387
Native Coinage Act 1870	315
Negotiable Instruments Act 1881	642
Northern India Canal and Drainage Act 1873	207
Northern India Ferries Act 1878	521
North Western Provinces Village and Road Police Act 1873	242
Oaths—see Indian Oaths Act 1873	237
Obstructions in Railways Act 1881	624
Opium Act 1878	389
Qudh Laws Act 1876	323
Outrages—see Punjab Murderous Outrages (Amendment) Act, 1877	387
Pensions—see Taj Mahal s Pension Act 1881	613
Police—see North Western Provinces Village and Road Police Act 1873	242
Preservation—see Elephants Preservation Act 1879	533
Presidency Magistrates (Court fees) Act 1877	397
Punjab Laws Act 1877	77
Punjab Laws (Amendment) Act 1878	515
Punjab Murderous Outrages (Amendment) Act 1877	387
Rampur s d Khattri Laws Act 1879	593
Recruiting—see Foreign Recruiting Act 1874	250
Relief—see Specific Relief Act 1877	353
Religious Societies Act 1880	599
Revenue Jurisdiction—see Bombay Revenue Jurisdiction Act 1876	318
Salt—see Transport of Salt Act 1879	538
Savings Banks—see Government Savings Banks Act 1873	203
Sea Customs Act 1878	405
Societies—see Religious Societies Act 1880	599
Special Marriage Act 1872	63
Specific Relief Act 1877	353
Taj Mahal s Pension Act 1881	613
Taxation—see Municipal Taxation Act 1881	617
Transport of Salt Act 1879	538
Treasure trove—see Indian Treasure trove Act 1878	393
Vaccination Act 1880	604
Vagrancy—see European Vagrancy Act 1874	252
Women s Property—see Marr ed Women s Property Act 1874	246

